

***Mipnei Darkhei Shalom & Mipnei Eivah***  
***reasons to do the right and the good***

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## ABSTRACT

Throughout rabbinic Judaism, relations between Jews and gentiles received a great deal of legal attention. Some rules regarding these relations include rationales to justify prohibitions and permissions. This project explores two of those rationales as found in *halakhic* literature from the *Mishnah* to contemporary *responsa*.

The introductory chapter briefly surveys terms found in legal texts referring to gentiles and then puts this study in a large context of the complex relationship between ethics and *halakhah*. Chapter two investigates *mipnei darkhei shalom*, for the sake of the ways of peace, as it is applied to economic and social relations. Chapter three examines *mipnei eivah*, for the sake of preventing the arousal of enmity, as it is related to economic, religious and social relations. The concluding chapter analyzes these rationales individually and in comparison. Different theories of their relationship are measured against these findings. A new theory, in terms of the right and the good, is offered as an alternative way to appreciate the function these rationales fulfill in embodying moral norms in legal form.

## ACKNOWLEDGMENTS

Bringing a project to fruition involves weaving together many sources. To the degree this paper represents the conclusion of a particular stage along my rabbinic journey, it also represents to some small degree the incredible wellsprings of support that nourished me over the years.

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# CHAPTER 1

## *Introduction*

We overhear in Roth's *The Counterlife* Maria explain to Nathan her dislike of people clinging to identity

just for the sake of it. I don't think there's anything admirable about it at all. All this talk about 'identities' – your 'identity' is just where you decide to stop thinking, as far as I can see. I think all these ethnic groups – whether they are Jewish, whether they're West Indian and think they must keep this Caribbean thing going – simply make life more difficult in a society where we're trying to just live amicably, like London, and where we are now very very diverse.<sup>1</sup>

On the surface of things, Maria's difficulty is with the passion some people use to express their tribalism. Deeper down, however, we find a desire to live as distinct beings and communities amicably in a diverse society. This yearning to live peaceably with neighbors pervades Jewish literature, both fiction and legal, old and contemporary.

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<sup>1</sup> Philip Roth, *The Counterlife*, 1st ed. (New York: Farrar Straus Giroux, 1986), page 344.

What does it mean to live peaceably with neighbors? How has Judaism over the centuries spoken of this desire and canonized it into its legal corpus (*halakhah*)? Some might think that the Torah spells out everything there is needed to know about how to live peacefully. They might argue the Torah addresses all Jewish needs, religious and otherwise, and also concerns itself with all the permutations of how to relate with gentiles. They may point to these verses to show that God has thought of everything necessary for Jews to live a good and holy life:

שמור תשמרון את מצות דוד אלהיכם ועדתיו וחקיו אשר צדק: ועשית הישר והטוב בעיני דוד

למען ייטב לך ובאת וירשת את הארץ הטבה אשר נשבע דוד לאבתך:

Be sure to keep the commandments, decrees and laws Adonai your God has enjoined upon you. Do what is right and good in the sight of Adonai, that it may go well with you and that you may be able to possess the good land that Adonai promised on oath to your ancestors.<sup>2</sup>

By obeying God's revealed rules, they argue, one automatically would be doing that which is right and good in God's sight. There is another way of looking at these verses, as championed by R. Moshe ben Nachman in 13<sup>th</sup> Century Spain: the Torah does not rule in regard to all specifics in human relationships. Instead, the Torah offers general rules and roles, and, for potential lacunae, the Torah stipulates that humanity must do "the right and the good in every situation," including making compromises and engaging in supererogation.<sup>3</sup>

Jews are obligated to do the right and the good amongst themselves as well as in relation to gentiles – in every situation. If Jews are not doing that which is right or good,

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<sup>2</sup> Deuteronomy 6:17-18. All translations are mine unless otherwise noted.

<sup>3</sup> Ramban on Deuteronomy 6:18. See also Rashi's comment there.

especially in regard to gentiles, then something must be done to address the situation. Ignoring the fact that Jews are not doing what is morally best in a given situation unnecessarily endangers the Jewish community. Jews have the capacity to do the moral thing toward gentiles; it is up to them to determine what that moral behavior is. How this is done is the subject of this paper.

Through the centuries Jews put into words and writing rules necessary to structure moral behaviors, altogether called *halakhah*, the way. Most laws found in *halakhic* literature carry no reasons for their presence in the corpus. A few laws, however, do include rationales for their inclusion. Of the many rationales that have been created over the centuries,<sup>4</sup> only a few have been employed in laws pertaining to Jewish-gentile relations. Two of these are analyzed here. The first rationale, *mipnei darkhei shalom*, translated as "for the sake of the ways of peace," is famous for its seemingly universalistic sentiment. *Mipnei eivah*, for the sake of arousing enmity – or better yet, for the sake of preventing the arousal of enmity, is the second rationale. At first glance, some might think these rationales lead to the same goal (a more amicable society) and hence are essentially the same.<sup>5</sup> While in some ways this might be true, our task is to determine to what degree these rationales are indeed similar. I suspect that these rationales lead to different visions of a peaceful society and are applied to different rules. Analysis of primary texts employing these rationales will, I hope, lead us to a discussion of how Jews have gone about legislating the right and the good in relations with gentiles.

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<sup>4</sup> Such as *mipnei tikkun ha'olam* (for the sake of repairing the world); *mipnei takkanat hashavim* (to facilitate rehabilitation); *mishum kevod habriot* (out of respect for the dignity of the individual); *mishum shalom malchut* (for the sake of peace of the polity); *mipnei darkhei no'am* (for the sake of the ways of pleasantness).

<sup>5</sup> For example: Walter S. Wurzbarger, *Ethics of Responsibility : Pluralistic Approaches to Covenantal Ethics*, 1st ed. (Philadelphia: Jewish Publication Society, 1994). See page 49.

Other scholars have explored these rationales, though *mipnei darkhei shalom* more than *mipnei eivah*.<sup>6</sup> None of them, however, focused exclusively on how these rationales are applied to relations with gentiles. I urge the reader to refer to these works to understand the breadth of issues to which these rationales are applied within the Jewish community. I, however, limit my analysis to those laws employing these rationales and are applied to Jewish-gentile relations. In brief, I am interested in relationships with those outside the Jewish covenantal community.

This topic compels me for several reasons. First and foremost, my own sense of overlapping identities inspires me to confront the different traditional sensibilities cultivating my character and shaping my behavior. I understand to some degree how certain values of our contemporary 'secular' society and its organizing principles promote pro-social behaviors toward those different from ourselves. My curiosity here is of why I, as a Jew, should behave a certain way toward gentiles for the sake of peace or for the sake of preventing enmity. What are those behaviors? Who thinks them important? How are these legislated?

Second, and more broadly speaking, though the Jewish community's spiritual pendulum once again swings toward the mystical, concern about the ethical remains.<sup>7</sup> Though some may think this concern has waned, I feel that its urgency is one we can ill afford to ignore. How Jews act in this world is a fundamental and primary issue. I believe we are obliged to think seriously how it is Jews have come to behave the way we

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<sup>6</sup> Walter S. Wurzburger, "Darkei Shalom," *Gesher: Bridging the Spectrum of Orthodox Jewish Scholarship* 6 (1978); Daniel L. Schiff, "Principles of Power: The Application of Ethical Norms within the Halacha" (Hebrew Union College - Jewish Institute for Religion, 1987); Wurzburger, *Ethics of Responsibility: Pluralistic Approaches to Covenantal Ethics*; Jennie Rosenn, "Mipnei Darkei Shalom in Rabbinic Tradition" (Rabbinic, Hebrew Union College - Jewish Institute of Religion, 1997); David Novak, *Covenantal Rights: A Study in Jewish Political Theory*, New Forum Books (Princeton, N.J.: Princeton University Press, 2000).



do and, based on that assessment, adjust our ways to better express our religious and moral sensibilities. This is not to say that these sensibilities are necessarily mutually exclusive; for many of us they are not. Nevertheless, understanding our historical development is important. It is equally imperative for us to consider how best to relate with gentiles to create a society more amicable than our current one.

### A Definitional Beginning

The bulk of this project examines *halakhah*. As *halakhah* tends to be casuistic, specific terms enhance a law's precision and its applicability.<sup>8</sup> To facilitate our study of the rules employing *mipnei darkhei shalom* and *mipnei eivah* in reference to gentiles, we first need to understand the characters involved. I leave aside the question of who a Jew is. This question is important and interesting, but not central to my topic.<sup>9</sup> Rather, we turn our attention to those who are not Jews: who are the gentiles? What names are applied to them? Have these names changed through history? I offer here a truncated survey of some of the terms commonly found in *halakhic* literature referring to gentiles, including *goyyim*, *nokhrim*, *minim* and *notzrim*, and *'ovdei kokhavim u'mezalot* ('*akum*).

Please note: extant texts have, almost invariably, been changed through history. Some of these changes are due to transmission errors. Many texts have been censored either by internal censors wanting to alter terminology for political or theological purposes, or by external censors expurgating Jewish legal texts of their seemingly

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<sup>7</sup> See Eugene B. Borowitz, "The Pivotal Issue in a Century's Jewish Thought," (New York: 2002).

<sup>8</sup> For a discussion of the challenges of casuistry in religious communities, see Albert R. Jonsen and Stephen Edelston Toulmin, *The Abuse of Casuistry: A History of Moral Reasoning* (Berkeley: University of California Press, 1988).

<sup>9</sup> I employ the terms Jew and Israelite interchangeably in this paper.

xenophobic and self-serving messages.<sup>10</sup> For example, many texts containing referents to gentiles were changed, replacing, say *goyim* for *nokhrim*, or vice versa. Particularly for earlier texts we can do little more than understand these terms found in *halakhah* as referring to gentiles generally, unless there is clear evidence they speak of a particular community. I include in the footnotes the referents found in the texts I consulted unless there is discussion about the terms themselves.

### *Goyyim*

An inclusive term, *goy* / *goyyim*, biblically meant "nation." It was applied to Israelites<sup>11</sup> as well as to non-Israelites.<sup>12</sup> *Goy* also has been associated with *nokhri*, foreigners.<sup>13</sup> The term *goy* designates specific nations who were to be treated by Jews with no mercy<sup>14</sup> and Jews were not allowed to marry them for such intimacy would lead Jews to idolatry.<sup>15</sup> The "Seven Nations" were to be exterminated, but this task was not completely fulfilled by Israel.<sup>16</sup>

During the time of the Tannaim and Amoraim (circa 100 BCE to 600 CE), the *goy* loomed large enough to warrant over 670 references in the Mishnah and both Talmuds. Generally, the term did not carry negative (or positive, for that matter) connotations. Yet there are examples of rabbis who used the term in expressions of emotion ranging from

<sup>10</sup> See Menachem Elon, *Jewish Law : History, Sources, Principles = Ha-Mishpat Ha-Ivri*, A Philip and Muriel Berman ed. (Philadelphia: Jewish Publication Society, 1994). Volume II:816-817; Neil S. Hecht and Boston University. Institute of Jewish Law., *An Introduction to the History and Sources of Jewish Law* (New York: Clarendon Press, 1996). page 429.

<sup>11</sup> For example: To Abraham: Genesis 12:2; To Moses: Numbers 14:12, Exodus 32:10; To all of Israel: Exodus 19:6, Deuteronomy 4:7, Isaiah 1:4, Jeremiah 7:28.

<sup>12</sup> To Ishmael: Genesis 17:20; To nations politically distinct from Jews: Deuteronomy 15:6, 28:12, Joshua 23:4; Isaiah 42:6

<sup>13</sup> Deuteronomy 29:21-23.

<sup>14</sup> Deuteronomy 7:1 – referring to the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites, Jebusites. See also Deuteronomy 12:2.

antipathy to admiration. For example, R. Shimon bar Yochai<sup>17</sup> asserted that even the best of the *goyyim* should be killed.<sup>18</sup> This makes sense, given his historical experience of living post-Bar Kochbah and under Hadrian's heavy rule.

As *goy* was often interchangeable with other terms, such as *notzri* and *nokhri* – both of which typically referred to Christians, its mention became suspect during Christian examinations of Jewish texts, particularly during inquisitions and disputations. Christian censors had many of these terms removed or replaced.<sup>19</sup> There was also a rejection of early connotations of *goy* meaning idolater. By the 16<sup>th</sup> Century, an attempt was made to declare contemporary *goyyim* as distinct from Talmudic *goyyim*, in that they no longer worshipped idols but rather the true Creator.<sup>20</sup> In 18<sup>th</sup> Century Poland, another clarification was put forward: "I emphatically declare that in all the laws contained in the Jewish writings, concerning theft, fraud, robbery, murder, etc., no distinction is made between Isarelite and non-Israelite, that the titles, *goyyim*, heathens, *akkum*, idolaters, and others, in nowise apply to the people in whose midst we live."<sup>21</sup>

<sup>15</sup> Deuteronomy 7:3. Exodus 34:16.

<sup>16</sup> Joshua 13:1-6.

<sup>17</sup> 5<sup>th</sup> Generation Tanna. 135-170 CE.

<sup>18</sup> JT, *Kiddushin*, 4:11 / 66c. Elsewhere the phrase continues, the *goyyim* should be killed in times of war (*b'sha'at milchamah*). See *Tosafot Avodah Zarah* 26b s.v. *v'lo moridin*; *Masechet Sofrim* 15:7. See also discussion in Jacob Z. Lauterbach, "The Attitude of the Jew Towards the Non-Jew," *Central Conference of American Rabbis Yearbook* 31 (1921), page 213.

<sup>19</sup> It is ironic that the "Protocols of the Elders of Zion" used the term *goy*. See Paul R. Mendes-Flohr and Jehuda Reinharz, *The Jew in the Modern World: A Documentary History*, 2nd ed. (New York: Oxford University Press, 1995), pages 363-367.

<sup>20</sup> Joseph Karo. *Beit Yosef. Hoshen Mishpat*. 266.

<sup>21</sup> R. Exekiel Landau. From his *Noda bi-Yehuda Mehadura. Tinyanah*. As cited in J. Hamburger, "The Non-Jews as Treated of in the Talmudic Literature," *Hebrew Review* I (1880), pages 149-150. I could not find this citation on the Bar Ilan.

### *Nokhrim, Minim and Notzrim*

At first, *nokhrim* were considered foreigners who have not severed ties with their homelands and cultures.<sup>22</sup> By the time of the Tannaim, the term *nokhri* referred to someone who engaged in idolatry.<sup>23</sup> Rashi (11<sup>th</sup> Century France), commenting on the Mishnah (BT *Gittin* 61a), uses the term *nokhri*, but then a page later does not comment on the gemara's change of the term to idolater ('*akum*). Rambam (12<sup>th</sup> Century Egypt) also sees synonymous *nokhri* and '*akum* in some of his *halakhot*.<sup>24</sup>

R. Nachman (4<sup>th</sup> Century) explained that no other nation included *minim*, suggesting that *minim*, heretics, can only be of or from the Jewish community.<sup>25</sup> Yet, R. Tarphon (80-110 CE) thought *minim* books (*gliyonim*) were 'gospels of heresy' and should be burned.<sup>26</sup> This began the association of *minim* with Christianity.<sup>27</sup>

The term *notzri* refers to the town Nazareth, and hence was associated with Jesus of Nazareth and with Christians more generally.<sup>28</sup> Rambam refers to Jesus of Nazareth in a less than complimentary way, and suggestively calls Christians (and Muslims<sup>29</sup>, for that matter) uncircumcised of heart ('*orlei-lev*).<sup>30</sup> In contrast, the Me'iri calls his contemporary (non-Jewish) neighbors '*ummot ha-gedurot be-darekhay hadatot* "nations

<sup>22</sup> Deuteronomy 29:21; II Chronicles 6:32ff

<sup>23</sup> Mishnah *Avodah Zarah* 4.4. See how Rav bar Huna (290-320 Babylon) changes R. Yohanan's (250-290 Israel) statement in *Berachot* 47b about a *ger* who is not circumcised nor immersed is like a *nokhri* who is not immersed – which means for Rav b. Huna that that *ger* is like someone who engages in idolatry ('*oved kochavim*) in *Yevamot* 46a; *Avodah Zara* 59a.

<sup>24</sup> See Kehati's Hebrew-English Mishnah, 1994.

<sup>25</sup> BT *Hullin* 13b.

<sup>26</sup> BT *Shabbat* 116a.

<sup>27</sup> See Tosefta *Sanhedrin* 13.5. BT *Rosh Hashanah* 17a. See also Rashi at BT *Hullin* 13b. s.v. *min*.

<sup>28</sup> BT *Sanhedrin* 43a. In the Vilna Shas, this section of the *sugya* has been expurgated by censors. It is found on the Bar Ilan CD.

<sup>29</sup> This paper's scope does not include explicit discussion of Muslims or Islam. Nevertheless, some interesting observations of local behavior can be found on BT *Yevamot* 63b. Maimonides' analysis of Muslim philosophical thinking, *kalaam*, and its assertion of the eternity of the world and its temporal creation, reflect an overall disdain. See his *Guide of the Perplexed*. I:71.

<sup>30</sup> MT *Melachim*. 11.4

restricted by the ways of religion", in apposition to those of Talmudic times, which were nations not restricted by the ways of religion and thus were idolaters.<sup>31</sup> Me'iri also claims that Talmudic reference of the term *notzri* referred to Nebuchadnezzar, and hence could not refer to contemporary Christians.<sup>32</sup>

**'Akum ('ovdei kokhavim u'mezalot)**

Though Eliezer ben Hyrcanus, a second generation Tanna (c90-130), thought that every gentile is intent upon idolatry ('oved kokhavim),<sup>33</sup> R. Yohanan, a Palestinian Amora (c250-290) averred that gentiles (*nokhrim*) outside the land of Israel did not engage in idolatry, but rather practiced traditions passed on to them by their ancestors.<sup>34</sup> Yohanan also asserted that anyone who denied idolatry is a Jew (*yehudi*).<sup>35</sup> Regardless, idolaters existed even in Israel and economic and social relations existed between Jews and idolaters.<sup>36</sup> Maimonides thought the term 'akum was synonymous for a gentile no matter where they were.<sup>37</sup> He could be basing this equation on the Talmudic attitude that all other nations had the chance to accept the Torah (and its distinctiveness) but opted not, and thus engaged in idolatry.<sup>38</sup>

<sup>31</sup> *Beit HaBehirah* on *Avodah Zarah*. See citation in Jacob Katz, *Exclusiveness and Tolerance; Studies in Jewish-Gentile Relations in Medieval and Modern Times*, Scripta Judaica 3 (London: Oxford University Press, 1961), page 115. See also *Beit HaBehirah Bava Kamma* 37b, as cited in Nachum L. Rabinovitch, "A Halakhic View of the Non-Jews," *Tradition* 8, no. 3 (1966), page 35.

<sup>32</sup> *Beit HaBehirah. Avodah Zarah*. Page 4. As cited in Katz, *Exclusiveness and Tolerance; Studies in Jewish-Gentile Relations in Medieval and Modern Times*, page 123, notes 1 & 3.

<sup>33</sup> *BT Sanhedrin* 105a.

<sup>34</sup> *BT Hullin* 13b.

<sup>35</sup> *BT Megillah* 13a.

<sup>36</sup> See *BT Avodah Zarah* 2a-ff. Just an interesting observation is that the term 'akum, or 'oved kochavim, is not used in the *Tosefta* for *AZ* 1.1. It is, however, used in 1.2. Further textual analysis is needed to understand these variances.

<sup>37</sup> See *MT Avodah Zarah* 10:5; *Mattenot 'Oniyim* 1:9; *Evel* 14:12 (again, he changed the term *nokhrim* on *BT Gittin* 61a to *akum*).

## Methodology

A brief discussion of my methodology highlights my approach to this topic. Before beginning, I tried to leave at the library door my desire to find universalism in this project. I wanted to listen to the texts as they are, not as I want them to be. So I began this study with articles on the concepts of *darkhei shalom* and *eivah* from the *Encyclopedia Talmudit*. These articles, surveying Talmudic, Gaonic, medieval codes and a few *responsa* collections, compile varying opinions on these themes. Each article contained several subheadings describing arenas to which these rationales are applied. The *eivah* article included these sections: between a husband and his wife; between a father and his sons; between a person and his friend (*chaver*); between Israel and gentiles (*nokhri*). The article on *darkhei shalom* divided into the following: because of honor (*mishum kavod*); because of suspicion (*mishum chashad*); regarding wealth; relations of neighbors and friends (*shkhenim u'chaverim*); relations with gentiles (*goy*). Though the whole *Encyclopedia Talmudit* has not yet been translated, the article *eivah* has been. This English version does not include the final section found in the Hebrew – regarding relations with gentiles. I thus set about translating those sections of both articles pertaining to Jews' relations with gentiles. I include those translations in the appendix here.

These articles, however, did not thoroughly analyze the texts they cite. Questions arose in my mind as to when these rationales were created in the first place, how they have been used through the centuries, which topics do they address and to whom did they apply. To answer these textual and legal questions, I went to the primary texts themselves. I sought the earliest manuscripts I could for my sources, though this was

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<sup>38</sup> BT *Avodah Zarah* 2b-3a. See Rashi there, too.

necessarily limited by time and resources. For those sources I could not find in manuscript or print forms I used the Bar Ilan CD (version 8) collection. The CD also enabled me to find many texts not previously cited in the *Encyclopedia Talmudit* articles.

I found three major arenas of relationships the rabbis addressed while employing these rationales: economic, religious and social. I began to group the texts according to my interpretation of the texts' major focus. This task proved challenging as these arenas are not completely mutually exclusive in reality or *halakhah*. Certainly a text's location in this discussion is subject to my own thinking; the reader should feel free to relocate particular texts into different arenas should one feel so compelled. Nevertheless, these three arenas help us see more clearly which issues received which rationales. The concluding chapter offers an analysis of these patterns.

I found assistance for this project from a variety of sources. For primary texts I used a panoply of aides, including Professors Michael Chernick and Alyssa Gray. I also consulted a variety of secondary scholarship on these particular rationales and on the kind of *halakhot* they exhibit: *takkanot*. Conversations with Rabbis Daniel Schiff, Eugene Borowitz, Elliot Dorff and David Novak enlightened my thinking about the complex relationships among these rationales, ethics and *halakhah*.

What fascinated me throughout was the idea that *halakhah* embedded in itself self-correcting mechanisms and sensibilities. It is incumbent upon *halakhah* to be ever vigilant in improving itself and being ever more moral. Dorff summarizes this awesome, and humbling, task:

Because human beings are fallible and because the conditions of life and moral sensitivities change, Jewish law as it has come down to us does not

always articulate the highest moral standard, and it certainly does not guarantee that those who follow it will necessarily be moral. Nevertheless, much of Jewish law does indeed set a high standard of morality for us, for Judaism, perhaps more than any other legal system on earth, strives to embody moral norms in legal form. Judaism cannot totally succeed in that effort, for life is too complex for any legal system to cover every possible eventuality. Moreover, life changes too much over time to be guided sensitively by the specific rules of the past. Hence there will always be a realm of moral duty and an even larger realm of moral goals beyond the limits of the law, and the law itself must be continuously subjected to moral critique. Nevertheless, a great deal of authority of Jewish law derives from its moral base – whether or not Jewish law is enforced.<sup>39</sup>

I saw in this study of *mipnei darkhei shalom* and *mipnei eivah* relevance to this larger project of critiquing extant *halakhah* for the purpose of rendering Judaism writ large relevant to our contemporary relationships with the broader world. And, conversely, this poses a challenge to influence society to be ever more in consonance with a Jewish vision of a more amicable and moral society. In short, this was to be an exercise in understanding Jewish engagement in ethical decision-making embodying moral norms in legal form.

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<sup>39</sup> Elliot N. Dorff, *Matters of Life and Death : A Jewish Approach to Modern Medical Ethics*, 1st ed. (Philadelphia: Jewish Publication Society, 1998). page 13.



## Map

The bulk of this project is found in the next two chapters. I first analyze the rationale *mipnei darkhei shalom* as found in the primary texts. After briefly highlighting its overall presence in *halakhic* literature, I proceed to the particular arenas to which this rationale is applied: economic and social relations. The concluding section puts forward my arguments as to why these *halakhot* are called *takkanot* – legislated reforms for the purpose of improving *halakhah*. My summary analyzes these *takkanot* at two levels: descriptive, as they depict aspects of reality as the rabbis saw it; and legally, as the patterns show trends and major concerns among legists. I also question other contemporary scholars' interpretations of this rationale.

The third chapter takes a close look at *mipnei eivah* in the primary texts. I found it applied to all three arenas: economic, religious and social. Concern among the legists about hierarchies of authority warrants attention in the concluding section. Again, I analyze these *takkanot* at both descriptive and legal levels to understand better how this rationale has been employed.

The fourth chapter steps back for a broader look at these two rationales. I present an analysis of how these rationales function on their own and in comparison. Are they, as some scholars stipulate, virtually the same, or are they distinct in meaning and purpose? The answer to this question proves not either / or. Rather, the rationales' complex relationship leads to a final section discussing the interrelationship of ethics and *halakhah*. In so doing, I hope to show that Jews have long taken seriously their responsibility for gentiles, and that we can and should continue to do the right and the good for an ever more amicable society.

## CHAPTER 2

### *Mipnei Darkhei Shalom*

The oft-cited passages from Proverbs<sup>40</sup> surrounding the reading of the Torah in Jewish prayer services include the famous phrase: "its [the Torah's] ways are ways of pleasantness, and all its paths are peace."<sup>41</sup> The Tannaim declared that the purpose of the whole Torah is peace.<sup>42</sup> Rashi, in the 11<sup>th</sup> Century, averred that the Torah *itself* declared its purpose as מפני דרכי שלום (*mipnei darkhei shalom*) "for the sake of peace."<sup>43</sup> Maimonides in the 12<sup>th</sup> Century hinges laws requiring Jews to be kind to gentiles on this verse.<sup>44</sup> But such generosity of spirit was contingent: as long as Jews were subject to gentiles Jews were to extend such niceties, but the moment Jews gained the upper hand in the land of Israel, such benevolent behavior was no longer afforded select gentiles.<sup>45</sup>

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<sup>40</sup> Especially Proverbs 3:13-18.

<sup>41</sup> Proverbs 3:17.

<sup>42</sup> BT *Gittin* 59b.

<sup>43</sup> Rashi on BT *Gittin* 59b. *amar lo d'oraita hi*.

<sup>44</sup> *Mishneh Torah Melachim* 10:12.

<sup>45</sup> *Mishneh Torah Avodah Zarah* 10.6. Maimonides differentiates gentiles who took upon themselves the Noahide laws (*ger toshav*) from idolaters (*'akum*). Once the political landscape had changed in favor of Jews in the land of Israel, he thought it reasonable for Jews to stop extending support to idolaters. In fact, he would rather they be relocated out of the land unless and until they accept the Noahide laws.

What were these *darkhei shalom* – paths of peace? And how did rabbis conceive of this concept through the centuries? This chapter explores the employment of *mipnei darkhei shalom* in regard to Israelite behavior toward gentiles. We seek to determine how *mipnei darkhei shalom* is deployed as a rationale in rabbinic legislation.

The earliest mention of the phrase *mipnei darkhei shalom*<sup>46</sup> is found in the Mishnah, a compilation of Tannaitic religious law formulated up to approximately 200 CE. The Mishnah uses this rationale fourteen times in five different *mishnayot*.<sup>47</sup> Of these, only three refer to non-Jews. Two (a, b) are found in the order concerning women, specifically in the tractate on divorce documents, and a third (c) is found in the order concerning seeds, in the tractate on the sabbatical year. At the end of each is a *takkanah*<sup>48</sup>, an enactment the sages decreed in reference to non-Jews. All of these *takkanot* are anonymous, suggesting that the majority of the sages at that time concurred with such statements. *Mishnah* (a) falls under the category of economic relations, while *Mishnayot* (b) and (c) are, interestingly, exactly the same, and they fall under the category of social relations. *Mipnei darkhei shalom* is found also nine times in the Tosefta, a compilation of legal decisions from the Tannaitic period.<sup>49</sup> The four that refer to non-Jews similarly speak about either economic relations or social interactions.

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<sup>46</sup> This paper also includes survey of "*mishum darkhei shalom*" which is linguistically the equivalent of "*mipnei darkhei shalom*." The former is less frequently cited than the latter, hence the latter is used as our referent.

<sup>47</sup> *Mishnah Gittin* 5.8 (8 times), 5.9 (2 times); *Mishnah Shviyit* 4.3, 5.9 (2 times); *Mishnah Shekalim* 1.3.

<sup>48</sup> I use this term as Menachem Elon's categorized this rationale in his discussion of *takkanot*. See Menachem Elon, "Takkanot," in *The Principles of Jewish Law*, ed. Menachem Elon (Jerusalem: Keter Publishing House, 1975), page 76.

<sup>49</sup> *Tosefta Peah* 3.1; *Tosefta Eruvin* 5.11; *Tosefta Nedarim* 2.7; *Tosefta Gittin* 3.13 (2 times), 3.14 (2 times); *Tosefta Avodah Zarah* 1.3; *Tosefta Chullin* 10.13.

Both the Babylonian Talmud<sup>50</sup> (circa 500-600 CE) and Jerusalem Talmud<sup>51</sup> (circa 500 CE) employ *mipnei darkhei shalom* and discuss its application to contemporary Jewish society. Commentators on Babylonian Talmud make mention this term over seventy times. Of the few occurrences in Midrashic literature, only one discusses social relations with non-Jews.<sup>52</sup> Maimonides (1135-1204) included this term sixteen times in twelve locations in his *Mishneh Torah*. The *Tur* (circa 1340) and *Shulchan Arukh* (circa 1560) mention this rationale less than a dozen times each. The popularity of this rationale is seen in its use over 800 times in *responsa* literature since the middle-ages; I am uncertain how many of these refer to relations with gentiles. In all, this rationale has endured through the centuries as a tool to justify and prohibit certain behaviors. The analysis that follows explores those texts concerned with relations between Jews and non-Jews in the spheres of economic relations and social relations. A question to keep in mind throughout this analysis is to what degree these *takkanot* reflect an ethical impulse and/or a pragmatic impulse.

### Economic Relations

Within the realm of economic relations between Jews and non-Jews, the first use of this rationale is found at the end of *Mishnah Gittin* 5.8.<sup>53</sup> It reads: "do not prevent poor gentiles from [taking] *leket*, *shikhechah*, and *pe 'ah*,<sup>54</sup> for the sake of peace."<sup>55</sup> Why

<sup>50</sup> 29 times in 10 different locations.

<sup>51</sup> 33 times in 14 different locations.

<sup>52</sup> *Midrash Tanhuma, Shoftim*, 18. *Dibbur Hamatchil: Ki Tikrov*.

<sup>53</sup> *Mishnah* on BT *Gittin* 59b. Vilna edition uses 'akum.

<sup>54</sup> These are gleanings, forgotten sheaves and the corners of the fields, biblically mandated to be left for the poor. See Leviticus 23:22 and Deuteronomy 24:19. According to Torah law, gentiles are not explicitly permitted access to these sources of sustenance. Nevertheless, the rabbis saw it fit to render permissible such sources to poor gentiles.

is this framed in the negative? Were Jews really preventing poor gentiles access to sustenance? This is plausible, since it was an economy of scarcity: whatever leftovers there may have been in Jewish fields, the sages may have felt those should rightly go to Jews and not gentiles.<sup>56</sup> If this be the case, then creating a rule making accessible resources allocated for the poor to all poor regardless of religion can be interpreted in two seemingly divergent ways. The first is a pragmatic, or political interpretation: the sages did not want to aggravate poor gentiles by keeping from them sustenance. "For the sake of peace" means literally to keep extant peace from turning sour. A different interpretation reflects a possible ethical impulse: the sages thought all poor, human beings created in God's image, deserve access to divinely sanctioned sustenance already allocated for the poor.

This latter interpretation receives possible support in later rabbinic sources. The *Gemara* on this *mishnah*, for example, interestingly inverts the *mishnah*'s teaching: "do not prevent poor gentiles..." becomes "the sages taught that we should provide sustenance for poor gentiles as we do poor Israelites, and we visit sick gentiles as we do sick Israelites, and we bury dead gentiles as we do dead Israelites – for the sake of peace."<sup>57</sup> The Tannaitic ruling in the *mishnah* was a negative precept: do not prevent non-Jews accessing material sustenance. In contrast, the Amoraic interpretation inverts this into a positive rule. Moreover, the Amoraim expand the realm of Israelite responsibility toward gentiles. Were these rules enacted for political reasons to prevent possible ruckus or did they reflect a universalistic sensibility? We cannot say for certain.

<sup>55</sup> The Albeck *Mishnah* edition refers *goy*, as do the Bar Ilan CD, and Kchati's *Mishnah*. See also the Jerusalem Talmud *Gittin* 5.9.

<sup>56</sup> I appreciate Rabbi Borowitz for this observation.

<sup>57</sup> BT *Gittin* 61a. Vilna Edition uses *nokhrim*, as does the Bar Ilan CD.

But as the Amoraim lump together care for the poor with other tasks generally called *gemilut chasadim*, we could argue that, at least for the Amoraim, *mipnei darkhei shalom* carried ethical meaning.

The next mention of the original negative rule not to prevent gentile poor securing material well-being is found 900 years later in Maimonides' *Mishneh Torah*. In his discussion of laws regarding idolaters, Maimonides copies the *mishnah* directly.<sup>58</sup> A modern commentator interprets prevention as detainment (*me'akvim*), and argues that this principle applies especially if gentile poor are found among poor Israelites.<sup>59</sup> In the section on laws regarding gifts to the poor, Maimonides refers to this *mishnah*, and like the Amoraim, changes the terms: "do not refuse poor gentiles gifts designated for the poor, rather we should consider poor gentiles under the category of poor Israelites, and we receive them [to give gifts designated for the poor] *mipnei darkhei shalom*."<sup>60</sup> Maimonides asserts that poor gentiles fall under the legal category of poor Israelites. Does he do this for pragmatic reasons or ethical considerations? As this is found among many other rules regulating care for the poor, it could be that Maimonides, who also lived in an economy of scarcity, thought this merely a practical concern: poor gentiles, like poor Israelites, should be attended to so as to keep them from causing trouble. What few resources there were to distribute to the poor, excluding poor gentiles just because they were gentiles might upset whatever peace there was. This rule, then, appears to serve as a protection of a negative peace. On the other hand, Maimonides stipulates that Jews

<sup>58</sup> *Mishneh Torah, Hilkhoh Avodat Kochavim*. 10:5.

<sup>59</sup> Rambam La'am edition.

<sup>60</sup> *Mishneh Torah, Hilkhoh Mattenot Aniyim* 1.9. The Bar Ilan CD and Warsaw edition use the term *akum*, while the Rambam La'am edition uses *goyim*.

should, no matter where they are, ensure that the poorest, whoever they are, have access to welfare – for the sake of peace.<sup>61</sup>

R. Jacob ha-Cohen of Narbonne in the 13<sup>th</sup> and 14<sup>th</sup> Centuries incorporated this negative *takkanah* in his book *Sefer Kolbo*.<sup>62</sup> R. Jacob ben Asher comments on this *mishnah* in the *Tur*: “do not prevent poor gentiles (*nokhri*) from taking...”<sup>63</sup> Referring to Christians seems reasonable, as R. Jacob ben Asher lived in 14<sup>th</sup> Century Spain where Christianity was increasing its political and economic power and was none too friendly with Jews (or other minorities at that). Like Maimonides, the *Tur*’s ruling seems to reflect a realpolitik sensibility. Following suit, Joseph Karo integrated this *mishnah* into both his *Beit Yosef* and the *Shulchan Arukh* as “do not prevent poor gentiles from taking *leket*...”<sup>64</sup> That Karo does not specify Christians reflects his context in 16<sup>th</sup> Century Palestine where Muslims were a dominant host culture. The repetitious inclusion of this negative *takkanah* of not interfering with poor gentiles accessing sustenance suggests that Jews throughout history needed constant reminders to treat the poorest of society with more or less equal consideration, regardless of religious affiliation. Or, possibly, the repetition reflects the transmission of a corpus of laws pertaining to *gemilut chasadim* to successive codifications.

<sup>61</sup> In the previous *halakhah* (1.8), Maimonides argues that Jews ought not give gentiles (*akum*) gifts for free. This law pertains to gentiles generally. In *halakhah* 1.9, Maimonides is speaking specifically about poor gentiles, a subcategory which, according to his calculus, should be considered among poor Israelites. See also *Tur Choshen Mishpat* 249.2 about the prohibition of giving gifts to idolaters (*akum*). The *Beit Yosef* says that this prohibition applies only to Ishmaelites and not to converts (*ger toshav*) who have accepted upon themselves the Noahide laws, and Israelites are obliged (*mitzavim*) to ensure their physical well-being (*Beit Yosef Choshen Mishpat* 249.2).

<sup>62</sup> *Sefer Kolbo*. 97: *haholkhim l'tarput*. He also includes the positive version of the *takkanah* as presented in the *gemara*.

<sup>63</sup> *Tur Shulchan Arukh Yoreh Deah* 151.13 end of section.

<sup>64</sup> *Beit Yosef Yoreh Deah* 151.13. *Goy* is the referent. The verb taking (*litol*) was not in the original *mishnah*. *Shulchan Arukh Yoreh Deah* 151.13. '*Akum* is used here.

The original prohibitive *takkanah* spoke of acts of commission inhibiting poor gentiles access to sustenance. This leaves open the possibility of acts of omission: while not preventing poor gentiles sustenance does not mean Jews are going to actively minimize the poor's suffering. The rabbis addressed this potential indifference with positive *takkanot*. The *gemara* on the *mishnah* cited above refers to a *baraita* stipulating that Jews ought to provide financial support for poor gentiles along with poor Israelites. The Tosefta offers this teaching, though referring to gentiles differently.<sup>65</sup>

Centuries later, Maimonides codifies this positive rule four times. The first copies the *mishnah*.<sup>66</sup> A modern commentator thinks this is stated so as not to arouse enmity (*eivah*) or persecution (*mastemah*) between Israelites and gentiles, for peace is greater than everything.<sup>67</sup> The second categorizes poor gentiles into a class with poor Israelites: "sustaining their poor [falls under the category of] poor Israelite, for the sake of peace."<sup>68</sup> He justifies this classification with two biblical verses: "God is good to all, and [God's] compassion is on all [God's] deeds,"<sup>69</sup> and "Its ways are ways of pleasantness and all its paths are peace."<sup>70</sup> What he emphasizes with these references is that no one, not even non-Jews, are beyond God's compassion or the Torah's search for peaceful existence among humans. Maimonides' third reference to this *mishnah* reads "we should provide financial support and clothe poor gentiles as we should for poor Israelites *mipnei darkhei shalom*."<sup>71</sup> The expansion to include clothing caught the eye of R. David ibn Zimra

<sup>65</sup> *Goyim* in Tosefta Gittin 3.13 (Lieberman edition, as found on the Bar Ilan CD). See also Jerusalem Talmud Gittin 5.9. Or 'akum in Vilna edition of the BT.

<sup>66</sup> *Mishneh Torah, Hilkhoh Avodat Kochavim* 10:5. Most editions refer to *akum*.

<sup>67</sup> Albeck's comments.

<sup>68</sup> *Mishneh Torah, Hilkhoh Melachim* 10:12.

<sup>69</sup> Psalms 145:9.

<sup>70</sup> Proverbs 3:17.

<sup>71</sup> *Mishneh Torah, Hilkhoh Mattenot Aniyim*, 7.7. Rambam La'Am edition uses *goyim*. The Warsaw edition refers to *akum*.



(1479-1589) in his commentary on the Mishneh Torah: "[Maimonides] generally thought food and financial support [for gentiles] were one argument, and they are for the sake of peace."<sup>72</sup> The fourth mention intertwines the positive and negative versions.<sup>73</sup> Remember that Maimonides limits these responsibilities: they apply as long as Jews remain among gentiles and are not politically sovereign in Israel. At that point, only gentiles who accept the Noahide laws shall receive the benefit of these rules.<sup>74</sup> However, by mentioning the biblical verses to justify including poor gentiles in the category of poor Israelites, Maimonides gives expression to an ethical sensibility: all poor are nonetheless human and deserve attention and care. He mentions this sensibility only once, suggesting that overall he views *darkhei shalom* as a pragmatic rationale to keep the peace on this issue.

A few centuries later, Joseph Karo questions the urgency of the *gemara*'s positive ruling. Echoing R. Jacob ben Asher's opinion<sup>75</sup>, Karo writes in the *Shulchan Arukh* that it is "permitted (*mutar*) to sustain their poor...for the sake of peace."<sup>76</sup> R. Shabbetai ben Meir Ha-Kohen, a leading halakhic authority (1621-1662), thinks that this applies even in the case when there are no poor Israelites.<sup>77</sup> And, in fact, Israelites already did offer support regardless of the presence of poor Israelites.<sup>78</sup> Not all rabbis agreed on such magnanimity. R. Joshua ben Alexander Falk ha-Cohen (d. 1614) (*Rafak*) in his commentary on the *Tur* offers a dissenting opinion: "we sustain poor gentiles with poor

<sup>72</sup> Radbaz on MT *Hilkhot Mattenot Ani'im* 7.7. Warsaw edition uses 'akum.

<sup>73</sup> Mishneh Torah, *Hilkhot Avo'dah Zarah* 10:5. 'akum here.

<sup>74</sup> Mishneh Torah *Hilkhot Avodat Kochavim* 10:6.

<sup>75</sup> *Tur Yoreh Deah* 151. See also *Tur Yoreh Deah* 351: "Thus it is permitted (*mutar*) to sustain their poor... for the sake of peace."

<sup>76</sup> *Shulchan Arukh Yoreh Deah* 151.12.

<sup>77</sup> Shakh on *Shulchan Arukh Yoreh Deah* 151.12.

<sup>78</sup> *Prishah* on *Tur Choshen Mishpat* 249.2. See also Joel Sirkes' (1541-1640) *Bait Chadash* on *Tur Yoreh Deah* 351. See also *Encyclopedia Talmudit* "Darkhei Shalom" column 623, footnote 117.

Israelites only, this [*takkanah* is justified by] the ways of peace, but in the case where there are only poor gentiles, we do not sustain them.”<sup>79</sup> The overall consensus, however, is that when the Hebrew text says *'im* (for example, עניים ונכרים עם עניי ישראל – poor gentiles “with” poor Israelites), it refers to “just as” and does not require the presence of poor Israelites in order for Israelites to be obliged to care for non-Jews’ material well-being.<sup>80</sup> This reflects, it seems, an ethical sensibility more than a pragmatic concern.

On a different aspect of economic justice, Israelites are obliged to protect gentile means of economic production. The Jerusalem Talmud asserts “we gather (*makhnisim*) gentile tools and Israelite tools for the sake of peace.”<sup>81</sup> Maimonides clarifies this ruling: “in every place we [should] gather their tools because of thieves, like [our obligation to gather] Israelite tools, for the sake of peace.”<sup>82</sup> Surprisingly, this hearkens back to a *meimra* in a *gemara* allowing Israelites to keep objects lost by Caananites and prohibiting Israelites returning lost objects to Caananites.<sup>83</sup> Maimonides argues, however, that lost items possibly associated with idolatry ought not be kept by Israelites. The Tur,<sup>84</sup> Beit Yosef,<sup>85</sup> and Shulchan Arukh<sup>86</sup> codify this *takkanah*. Though thievery is offered as a real concern, it itself does not suffice to justify this rule; *mipnei darkhei shalom* is the more authoritative rationale. For these *poskim* we may surmise an ethical impulse on this topic.

<sup>79</sup> Drishah on Tur Yoreh Deah 251. Uses *'akum*.

<sup>80</sup> See *Encyclopedia Talmudit*, “Darkhei Shalom”, column 623, note 114.

<sup>81</sup> JT *Avodah Zarah* 1.3. (*goyim*) JT *Gittin* 5.9, however, reads “we wash (*m'chavsim*) gentile tools...”

<sup>82</sup> MT *G'zeilah v'Aveidah* 11:3. *'akum* found.

<sup>83</sup> BT *Baba Kama* 113b. *amar rav manayin...*

<sup>84</sup> Tur *Choshen Mishpat* 266. Refers to objects of *cutim* – Samaritan. This is distinct from an idolater: see *Tosefta Avodah Zarah* 3.5

<sup>85</sup> Beit Yosef, *Choshen Mishpat* 266.1. Refers to objects of *'akum*.

<sup>86</sup> Shulchan Arukh *Choshen Mishpat* 266.1. Refers to objects of *'akum*.

Related to these issues of economic justice is the issue of taxation. Early on in Jewish history, rabbis saw the need to include all citizens of an area in taxation policies. The Tosefta states: "in a city which has both Israelites and gentiles, the communal leaders shall collect taxes from Israelites and from gentiles for the sake of peace."<sup>87</sup> The Jerusalem Talmud offers "a teaching about a city which has in it gentiles and Israelites: the gentile tax collectors and Israelite tax collectors shall stand and collect from that of gentiles and from that of Israelites."<sup>88</sup> Such taxation practices, however, did not receive much further elucidation, possibly reflecting the reality that Jews had few, if any, opportunities to serve as tax collectors for the greater community. The most recent rendition of this issue is from R. Abraham Isaac Kook (1865-1935), who argued that both gentile and Israelite collectors should collect taxes for the sole sake of *tzeddakah* for the community.<sup>89</sup> The reason for collecting from both communities is so that gentiles have nothing with which to complain against the Israelites.<sup>90</sup> Rav Kook, living in Mandate Palestine, clearly expresses a realpolitik concern: he does not use the phrase *mipnei darkhei shalom*.

## Social Relations

Jews always interacted with the more-than-Jewish world. The quality and quantity of Jewish relationships with non-Jews received much rabbinic discussion over the centuries. The earliest use of the rationale *mipnei darkhei shalom* in this discourse is found in the Mishnah. At the end of a *mishnah* about an Israelite woman's permission to

<sup>87</sup> Tosefta BT Gittin 3:18. Refers to 'akum.

<sup>88</sup> JT Gittin 5.9. (goyyim)

<sup>89</sup> Responsa Da'at Kohen. 132: *amnam icah*. Both *nokhrim* and *goyyim* are used here.

<sup>90</sup> Responsa Da'at Kohen 132: *umatzati l'nachon*.

lend cooking tools to a neighbor for the sake of peace, we find: "we encourage (*machazikin*)<sup>91</sup> gentiles<sup>92</sup> during the sabbatical year, but not Israelites, and we greet them (*sho'alin b'shloman*) – for the sake of peace."<sup>93</sup> Israelites were not supposed to tend their fields during the sabbatical year. The rabbis thus prohibited Jews assisting or encouraging other Israelites who were transgressing this rule; but encouraging a non-Jew was not considered a breach of the prohibition. This makes modest sense, as it behooves Jews to be at least cordial to those who fed them during this year of agricultural dependency. Furthermore, greeting someone with "Shalom" was a rabbinic *takkanah*.<sup>94</sup> As *Shalom* is a name for God, conveying that name in greeting to gentiles seems disingenuous or even blasphemous. Nevertheless, the rabbis established *Shalom* as a universal verbal greeting for any encounter. Rashi asserts that this verbal greeting should be used anytime everyday, even though it confers upon a gentile the name of heaven and the peace of God.<sup>95</sup>

The *gemara*'s discussion on this *mishnah* warrants investigation here

מחזיקין ידי עכו"ם בשביעית. והאמר רב דימי בר שישנא משמיה דרב: אין עודרין עם  
העכו"ם בשביעית, ואין כופלין שלום לעובר כוכבים! לא צריכא, למימרא להו אחזוקו בעלמא,  
כי הא דרב יהודה אמר להו אחזוקו, רב ששת אמר להו אשרתא. ואין כופלין שלום לעובר  
כוכבים. רב חסדא מקדים ויחייב להו שלמא. רב כרנא א"ל שלמא למר. ושואלין בשלומן. השתא  
אחזוקי מחזיקין, שואלין בשלומן מיבעיא? אמר רב ייבא: לא נצרכא אלא ליום רגם; דתניא: לא  
יבגם אדם לכתו של עובר כוכבים ביום חגו ויתן לו שלום, מצאו בשוק, נותן לו בשפה רפה

<sup>91</sup> There are different interpretations of this word. Soncino translates this as "assistance." Schottenstein reads "lend support." A more literal translation would be "strengthen." But as this sentence refers to verbal communication, I prefer "encourage."

<sup>92</sup> The Vilna Shas uses *nokhrim* at BT *Gittin* 61a. The Kehati and Albeck editions of the Mishnah read *goyim*.

<sup>93</sup> Mishnah. *Gittin* 5.9; this is repeated verbatim in Mishnah *Shevi'it* 4.3 and 5.9.

<sup>94</sup> Mishnah at BT *Berachot* 54a.

"[The *mishnah* states:] 'we encourage gentiles during the sabbatical year.' [What does] we encourage [mean?] R. Dimi bar Shishna<sup>96</sup> said in the name of Rav, [is it not true that] one may not plow with a gentile in the sabbatical year, nor return greetings [with a "Shalom, Shalom"] to a gentile? No. [The *mishnah*] is needed to teach: merely say to [the gentile] "Strength!" For R. Yehudah used to say [to gentiles] "Strength!" R. Sheshet<sup>97</sup> [on the other hand] said "Health!" [R. Dimi's second ruling teaches:] Do not return greetings to a gentile. R. Chisdah<sup>98</sup> would preempt [gentiles] and greet them with "Shalom." R. Kahanah would say "Shalom, [to you] master." [The *mishnah* states:] "we greet [gentiles]." Now that [saying] "Strength!" is the equivalent of "we encourage" [gentiles at work during the sabbatical year], is it necessary to state the equivalent of greeting them? [Certainly greeting gentiles would be acceptable.] R. Yeeba said, [this rule to greet a gentile] is necessary only for the day of their festival. For it is taught in a *baraita*: a person should not enter the house of an gentile on the day of his [the gentile's] festival, nor say to him "Peace" [i.e., give him greeting]. Should [the Israelite] encounter [the gentile] in the market, say [hello] to him in an undertone and with solemnity."<sup>99</sup>

<sup>95</sup> Raslhi at BT *Gittin* 61a. *v'shoalin b'shlomin*. (*nokhri* is the term here) See also comments by Albeck on Mishnah *Gittin* 5.9

<sup>96</sup> Fourth Generation Amora in Palestine, especially in Pumbeditha.

<sup>97</sup> Third Generation Amora in Babylon.

<sup>98</sup> Third Generation Amora in Babylon, especially in Sura.

<sup>99</sup> BT *Gittin* 62a. The translation is this author's. Soncino and Schottenstein editions were consulted when necessary. Regarding the final phrase, the Soncino edition of BT *Gittin* 62a translates this

Could it be that this *gemara* follows the *Tosefta* that teaches: a person should not transact with gentiles<sup>100</sup> on the day of their festival, nor make light of his head (*lo yikal 'imo et rosho*), nor greet them, [but] in a place where it is suspected that [the gentile] will be found on his way, greet him with solemnity (*b'choved rosh*)?<sup>101</sup> The *gemara* may be swayed by the *Tosefta*'s argument that verbal communication should be avoided at all costs, but in the last resort, greet a gentile in a way so as not to inspire their festive spirit.

Rashi, in his comments on this *sugya*, notes: "returning a greeting: That saying 'Peace' to a gentile [is done based on the rationale] *mipnei darkhei shalom*, and this is permitted. [But the rationale] for the sake of peace [to say hello gives permission to say this] once, and that suffices."<sup>102</sup> But is speaking really acceptable to Rashi? He continues: "say to him 'Strength!': Saying this to someone engaged in work renders the speaker a transgressor and [equivalent of someone who] assisted the worker with his own hands."<sup>103</sup> Rashi seems to eschew verbal interaction with gentiles during the sabbatical year as evidenced by encouraging minimal verbal interactions with gentiles. Knowing of the traditional practice returning a greeting with a double greeting (*koflin shalom*),<sup>104</sup> Rashi would rather have Jews pre-empt gentiles by greeting them first. In this way, Jews would not be obliged to return a double greeting ("*shalom, shalom*") to a gentile, which would be particularly awkward especially during the sabbatical year and during a gentile's festival, and might encourage the gentile to go give thanks to an idol.<sup>105</sup> Joseph Karo codified pre-emptive greeting by stating that an Israelite is always forbidden to

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as "greet him in a mumbling tone and with downcast head;" the Schottenstein edition reads "give him [a greeting] in a low voice and in a restrained manner."

<sup>100</sup> Vilna edition of *Tosefta Avodah Zarah* 1.2 read '*akum*'. A critical edition of the *Tosefta* reads *goy*.

<sup>101</sup> *Tosefta*. BT *Avodah Zarah* 1.2.

<sup>102</sup> Rashi on BT *Gittin* 62a. *v'ein koflin*. ('*akum*)

<sup>103</sup> Rashi on BT *Gittin* 62a. *l'meimra laho akhzuko*.

<sup>104</sup> See I Chronicles 12:19, and the *gemara* at end of BT *Gittin* 62a.

return a gentile's greeting with a double greeting; rather, it is better (*tov*) to precede a gentile's greeting by offering a single greeting of *shalom*.<sup>106</sup> In this regard, *darkhei shalom* appears to be merely a tool for pragmatic concerns.

Maimonides echoes the *gemara* by saying that an Israelite may strengthen gentiles<sup>107</sup> by words only during the sabbatical year.<sup>108</sup> Oddly enough, he does not include the rationale *mipnei darkhei shalom*. Could it be that Maimonides thought that this rationale no longer justified verbal communication between Jews and gentiles? Or perhaps Maimonides wanted to emphasize that his version of "to strengthen" (*machazikin*) really meant only verbal interaction, which suggests that the *mishnah's machazikin* included physical assistance. On the other hand, Maimonides does make reference to the *mishnah's* teaching to greet gentiles as interpreted by the *gemara*: "greet gentiles even on the day of their festivals, but never extend to them a double greeting, nor enter a gentile's house on his festival day to give him greetings, but should you encounter him in the market, greet him in an undertone and with solemnity."<sup>109</sup> But again, this does not include the rationale *mipnei darkhei shalom*. It appears Maimonides did not consider this rationale necessary for these rules, possibly because he did not consider these rules as either keeping the peace (by preventing upset) or ethically oriented generally. What mattered was protecting the Jews' food source as it was produced by gentiles. Either way, these rules stood on their own.

*Mipnei darkhei shalom* also has been integral to rabbinic discourse about social interactions between Jews and gentiles in the arena of health care. Two realms are

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<sup>105</sup> See Rashi's comments on the *sugya* at the end of BT *Gittin* 62a.

<sup>106</sup> *Shulchan Arukh Yoreh Deah* 148:10.

<sup>107</sup> Rambam La'Am edition uses *goyyim*. The Bar Ilan CD reads 'akum.

<sup>108</sup> MT *Shmita v'Yovel*. 8.8.

explored here: the first is the realm of caring for the sick, and the second is the realm of caring for the dead and mourners.

Care for the sick, regardless of religious affiliation, is a central value for early rabbis. In the *gemara*, we find "we visit sick gentiles just as [we visit] sick Israelites."<sup>110</sup> In the 12<sup>th</sup> Century, R. Judah ben Barzillai of Barcelona listed this teaching among others in his *Sefer Ha-Ittim*.<sup>111</sup> Maimonides strengthened this *takkanah* by rendering it a religious obligation: "even of the gentiles, the sages commanded (*mitzavu*) [Israelites] to visit their sick."<sup>112</sup> R. Asher ben Yehiel included the rule to visit sick gentiles in his 14<sup>th</sup> Century legal digest.<sup>113</sup> The *Tur*<sup>114</sup> codified the *gemara*'s version, as did Joseph Karo in the *Beit Yosef*<sup>115</sup> and *Shulchan Arukh* (which afforded this teaching its own ruling, unattached to others).<sup>116</sup> In the *Beit Yosef*, Karo adds that visiting the sick has great healing powers for the ill, and Israelites should heal sick gentiles just as Israelites heal sick Israelites – for the sake of peace.<sup>117</sup> According to R. Shabbetai ben Meir Ha-Kohen in the 17<sup>th</sup> Century, this obligation applies even if there are only sick gentiles, which is consistent with his opinion on economic responsibility to poor gentiles (see above).<sup>118</sup> Even 20<sup>th</sup> Century rabbis mention this rule of caring for the sick regardless of religion.<sup>119</sup>

<sup>109</sup> MT *Avodah Zarah*. 10:5.

<sup>110</sup> BT *Gittin* 61a. *Nokhri* is found in both the Vilna edition and the Bar Ilan CD. See also JT *Demai* 4 / 24a, JT *Gittin* 5 / 47c, JT *Avodah Zarah* 1 / 39c.

<sup>111</sup> *Sefer Ha-Ittim*. 175. The Bar Ilan CD includes the term *goy* in this section.

<sup>112</sup> MT *Melachim* 10:12. ('*akum* is used) See also MT *Evel* 14:12. In his *Responsa* 449 (*Ishuvah amnon*), Maimonides does not say this is a *mitzvah*.

<sup>113</sup> *Kitzur Piskei HaRosh*. BT *Gittin* 5.22. ('*akum* here).

<sup>114</sup> *Tur Yoreh Deah* 335.

<sup>115</sup> *Beit Yosef Yoreh Deah* 335.9.

<sup>116</sup> *Shulchan Arukh Yoreh Deah* 335.9

<sup>117</sup> *Beit Yosef Yoreh Deah* 158.1: *hagoyim sheyordim*. (*goyyim* is found here)

<sup>118</sup> *Shakh* on *Shulchan Arukh Yoreh Deah* 335.9.

<sup>119</sup> See Moshe Feinstein's *Iggerot Moshe Yoreh Deah* II:130: *hanachon l'dina*. And R. Pinchas Zvichi's *Ateret Paz* I:3 *Choshen Mishpat He'orot* 12:1: *ubar min*.



Care for the dead and mourners received similar attention through the centuries by the rabbis, and was often linked with the rationale *mipnei darkhei shalom*. The earliest mention of this obligation is found in the Tosefta: "we eulogize over and bury dead gentiles for the sake of peace; we comfort mourning gentiles for the sake of peace."<sup>120</sup> The obligation to eulogize, however, disappears from rabbinic discourse only to resurface in the Tur in the 14<sup>th</sup> Century,<sup>121</sup> and again in the Shulchan Arukh in the 16<sup>th</sup> Century.<sup>122</sup> Though the *gemara* excludes eulogizing, it speaks of the obligation to bury dead gentiles (*nokhrim*) just as Israelites are obliged to bury dead Israelites for the sake of peace.<sup>123</sup> The referent *nokhrim* reappears in the 19<sup>th</sup> Century with R. David Tzvi Hoffman (1843-1921),<sup>124</sup> R. Mordechai Yaakov Breisch,<sup>125</sup> R. Jehiel Jacob Weinberg (1885-1966),<sup>126</sup> R. Eliezer Judah Waldenburg (1917-),<sup>127</sup> and R. Pinchas Zvichi (1948-),<sup>128</sup> all of whom discussed issues of burial issues.

Both the Tosefta<sup>129</sup> and *gemara*<sup>130</sup> clump together obligations to care for dead and mourners, regardless of religious affiliation of the deceased or living, *mipnei darkhei shalom*. But what does it mean to bury dead gentiles *with* dead Israelites? Rashi argues that "with ('im) dead Israelites [means]: do not [bury gentiles] in an Israelite cemetery, rather engage in the business of burying [gentiles only] if they are found among killed

<sup>120</sup> Tosefta BT Gittin 3:18 (Vilna Edition uses 'akum). The Bar Ilan CD has *goy*.

<sup>121</sup> Tur Yoreh Deah 151.12. See also the Beit Yosef Yoreh Deah 151.12.

<sup>122</sup> Shulchan Arukh Yoreh Deah 151.12.

<sup>123</sup> BT Gittin 61a.

<sup>124</sup> Melamed Le'Ho'il. II: Yoreh Deah 137:2.

<sup>125</sup> Chelkat Ya'akov. Yoreh Deah. 203:7.

<sup>126</sup> Shridei Eish. 3:101a

<sup>127</sup> Tzitz Eliezer. 10:25.9

<sup>128</sup> Ateret Paz. 1:3 Even HaEzer 5: v'af d'bgamara

<sup>129</sup> Tosefta BT Gittin 3:18.

<sup>130</sup> BT Gittin 61a.

Israelites."<sup>131</sup> Maimonides, though, disagrees about the condition of the presence of dead Jews. He avers that the injunction to bury dead gentiles and comfort mourning gentiles should be done regardless if dead or mourning Israelites are found. He states "bury dead gentiles, comfort mourning gentiles, and visit sick gentiles for the sake of peace" without mentioning dead, mourning or sick Israelites.<sup>132</sup> Though he is not clear about burying gentiles in a Jewish cemetery, he is clear that care for gentiles is not contingent on the presence of similarly needy Israelites. Elsewhere Maimonides asserts that the sages commanded (*tzivu*) even gentiles [as well as Israelites] to visit sick gentiles, and bury dead gentiles with (*'im*) dead Israelites... for the sake of peace.<sup>133</sup>

Burying gentiles should not be done in an Israelite cemetery because "it is forbidden to bury a wicked person in a righteous person's place."<sup>134</sup> Even though gentiles should not be buried in a Jewish cemetery, burying dead gentiles for the sake of peace was important enough to be codified by Karo.<sup>135</sup> According to the Shakh, Jews should in fact strive to engage in burying dead gentiles, that is, bury them with conscientiousness, not necessarily eagerness.<sup>136</sup> Not only should Israelites engage in the physical activity of burying dead gentiles, but should the case arise, Israelites should extend a loan so that dead gentiles can be buried, for the sake of peace.<sup>137</sup> In fact, if the dead gentile were royalty or a righteous person, an Israelite should offer a loan for the sake of the peace of the kingdom (*mishum shalom malkhut*). Furthermore, an Israelite

<sup>131</sup> Rashi on BT *Gittin* 61a. *'im matei Yisrael*.

<sup>132</sup> MT *Evel* 14:12. Kehati edition reads *goyim*.

<sup>133</sup> MT *Melachim* 10:12.

<sup>134</sup> BT *Sanhedrin* 47a.

<sup>135</sup> *Beit Yosef Yoreh Deah* 367.1; *Shulchan Arukh Yoreh Deah* 367.1

<sup>136</sup> *Shakh on Shulchan Arukh Yoreh Deah* 367.1

<sup>137</sup> R. Chaim Palache (1788-1869, Turkey). *Chaim Biyad*. 125: *mat leveyah*.

should go to the house of mourning and offer loans until the dead is buried so as not to encourage enmity.<sup>138</sup>

The issue of comforting mourning gentiles for the sake of peace received attention from the Tosefta onwards. Even during times of increasing tensions between Jews and gentiles, some rabbis thought it necessary to include this task in their laws. For example, Maimonides who moved from Spain to Morocco to Israel and to Egypt in the 12<sup>th</sup> Century, mentions comforting gentile mourners once,<sup>139</sup> although he cites the other obligations (to bury and to care for sick gentiles) twice.<sup>140</sup> Though R. Asher ben Jechiel (1250-1327) fled to Spain because of persecutions in Germany, he includes this obligation in his commentarial code on the Talmud.<sup>141</sup> At about the same time, R. Jacob haCohen, who was expelled from France in 1306 with the rest of French Jewry, avers that no Jew should degrade a corpse, but rather should engage in burying the dead and comforting mourners, especially gentiles – *mipnei darkhei shalom*.<sup>142</sup>

On the other hand, it is interesting to note that some rabbis felt that this injunction to comfort gentiles did not either need comment or should be excluded from their discussion of caring for gentiles for the sake of peace. For example, nowhere does Rashi comment on this injunction, even though he enjoyed an historical era of fairly consistent positive relations with gentiles. In the 20<sup>th</sup> Century, only one scholar refers to Maimonides' rule to comfort gentile mourners, but only as a proof-text for a discussion on giving to the poor.<sup>143</sup> The relative silence on this topic through the centuries may

<sup>138</sup> Chaim Biyah. 125: *mat leveyah*.

<sup>139</sup> MT *Hilkhot Evel* 14:12.

<sup>140</sup> See again at MT *Hilkhot Melachim* 10:12.

<sup>141</sup> Rosh on BT *Gittin*. 5:23.

<sup>142</sup> *Sefer Kolbo*. 114. *ein mefanin*.

<sup>143</sup> This is according to a search on the Bar Ilan CD. R. Pinchas Zvichi (1948-, Israel). *Ateret Paz*. I:3: *Choshen Mishpat*: 12:1

reflect the desire on the part of some rabbis to minimize social interaction between Israelites and gentiles, particularly when gentiles would be feeling vulnerable and needy – such as during mourning. Unlike burying the dead and visiting the sick, comforting mourners may create drawn out and involved relations. Possibly the rabbis downplayed this *takkanah* to avoid establishing such strong emotional bonds between Israelites and gentiles. (We shall see in the chapter on *eivah* reticence to interact with gentiles when they are emotionally excited by festivities.)

Overall, these *takkanot* referring to care for gentile ill, dead and mourning reflect less a pragmatic concern than other *takkanot mipnei darkhei shalom*. Note that Maimonides repeatedly renders obligatory these responsibilities and includes this rationale. Other people could have provided these services to the gentiles; Jews did not have a monopoly on health care nor burial. Jews could have done other things with their time and resources. The rabbis thought attending to gentile sick and dead overrode concerns about limited resources. Visiting the sick to attend to their needs and burying dead bodies are, at least in the centuries the rabbis were writing, vital contributions to minimizing the spread of disease among humans. As such, these activities are essential for maintaining public health. By employing *mipnei darkhei shalom*, they give expression to an ethical sensibility in regard to these aspects of public health.

## Conclusion

What is *mipnei darkhei shalom* and how has it been used in regard to gentiles? While I have been using the term *takkanah* to label legislation using this rationale, other legal terms may also be considered. One is *gezerah*, or decree. “A *gezerah* is generally

applied to the determination of directives aimed at deterring man from the prohibited, at making 'a fence around the Torah.'<sup>144</sup> Sometimes a *gezerah* is declared to stop particular invidious behaviors: "wherever there is some evil practice that has to be stopped, an immoral situation that has to be eliminated, one may suspend a specific law and institute measures needed to achieve the necessary improvement. This is the meaning of *l'migdar milta*, 'to fence in a thing.'<sup>145</sup> Hedges around the law were to keep Jews from transgressing extant religious strictures. Logically, the rabbis could add indefinitely *ad absurdum* to these protective measures. To counter this possibility, the sages set up restrictions. "We do not decree a *gezerah* unless the majority of the community is able to uphold it."<sup>146</sup> Restrictions are not added merely in order to buttress a previous restriction.<sup>147</sup> Furthermore, "one *Bet Din* [rabbinic court] cannot annul the decree of another *Bet Din* unless it is greater in both wisdom and numbers."<sup>148</sup> Even though these restrictive mechanisms were put on paper, both in theory and in practice these were not necessarily followed.<sup>149</sup> In sum, *gezerot*, grounded in scripture, seek to protect the community from engaging in transgressive behaviors and are decreed only if and when the sages assume the whole community can abide by the new ruling.

In contrast to *gezerot*, which are "directives of a negative nature prohibiting the performance of a particular act," legislation "of a positive nature enjoining the doing of a particular matter," are called *takkanot*, new regulations for novel social situations.<sup>150</sup> Lewittes differentiates *takkanot* from *mitzvot*, which are permanent: "*takkanot* are for a

<sup>144</sup> Elon, "Takkanot," page 74.

<sup>145</sup> Eliezer Berkovits, *Not in Heaven: The Nature and Function of Halakha* (New York: Ktav Pub. House, 1983), page 69.

<sup>146</sup> BT *Avodah Zarah* 36a.

<sup>147</sup> BT *Beitzah*, 3a.

<sup>148</sup> BT *Avodah Zarah* 36a. See also BT *Shabbat* 112b.

<sup>149</sup> I thank Alyssa Gray for pointing this out to me.

given situation which may change in the course of time and create the need for new regulations superseding the old ones. Furthermore, *mitzvo*t obligated the people as a whole; whereas the number of people made subject to *takkanot* varied according to the scope of authority exercised by the regulating authority."<sup>151</sup> Segal observes that "usually it was the *Nasi* who made such enactments, since he was recognized as having overall judicial authority (usually combined with political authority)."<sup>152</sup> Some *takkanot* came not just from rabbis but also from the communities themselves and are called *takkanot ha'kahal*.

Communities, associations, and other social organizations within the Jewish community enacted rules of behavior, at times with the approbation of the local rabbi. These *takkanot* were recognized as part of the community's traditional rights and were binding on community members 'forever' – unless a time limit was specified. Ordinances were enacted by communal leaders without the explicit approval of local residents (there were no provisions for referenda) and were recorded in the community, association or society record book.<sup>153</sup>

New legislation in economic and social affairs were "enacted in deliberate reaction to some major, overall change in living conditions; and since it was not a response to specific circumstances, [a *takkanah*'s] enactment was apparently subject to certain

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<sup>150</sup> Elon, "Takkanot," page 74.

<sup>151</sup> Mendell Lewittes, *Principles and Development of Jewish Law : The Concepts and History of Rabbinic Jurisprudence from Its Inception to Modern Times* (New York, N.Y.: Bloch Pub. Co., 1987). page 99.

<sup>152</sup> Peretz Segal, "Jewish Law During the Tannaitic Period," in *An Introduction to the History and Sources of Jewish Law*, ed. Neil S. Hecht, et al (Oxford: Oxford University Press, 1996). page 112.

<sup>153</sup> Edward Fram, "Jewish Law from the Shulhan Arukh to the Enlightenment," in *An Introduction to the History and Sources of Jewish Law*, ed. Neil S. Hecht, et al (Oxford: Oxford University Press, 1996). page 366.

rules."<sup>154</sup> If enactments were so specific to their historical circumstances, they would not be considered *takkanot*: "for moments or situations of unique significance in the history of the Jewish people, there can be no prescribed law. To acknowledge their meaning and to give them adequate expression, one has to create 'the law of the hour,' *hora'at sha'ah*."<sup>155</sup> *Takkanot*, however, are not so time-specific or situation-bound. Rather, *takkanot* were enacted for the purpose of *tikkun ha'olam* – the welfare of society – which has a more enduring quality than a law for the moment.<sup>156</sup>

Enactments for the welfare of society sometimes "contradicted the accepted law, even a law grounded in the scriptures themselves."<sup>157</sup> In fact, a *takkanah* "is an enactment made by the Rabbis but inferred neither from a biblical verse nor from a decided case."<sup>158</sup> And yet there is a scriptural basis for creating *takkanot* in Deuteronomy 6:17-18. These verses do not say that ethics and law are solely human responsibilities, but nor do they preclude human responsibility altogether. R. Moshe ben Nachman observes that while the Torah covers many topics in detail, it does so more at a general level. With these verses, the Torah gives impetus for compromise (*p'sharah*) and for behaving more generously than the law requires (*lifnim meshurat hadin*).<sup>159</sup> R. Joseph Albo echoes Ramban's approach to explain how humans are obliged to make new laws based on assessments of contemporary circumstances:

<sup>154</sup> Gideon Libson, "Halakhah and Law in the Period of the Geonim," in *An Introduction to the History and Sources of Jewish Law*, ed. Neil S. Hecht, et al (Oxford: Oxford University Press, 1996). page 218.

<sup>155</sup> Berkovits, *Not in Heaven : The Nature and Function of Halakha*. page 69.

<sup>156</sup> For example, see Mishnah, BT *Gittin*, Chapter 4.

<sup>157</sup> Segal, "Jewish Law During the Tannaitic Period,". page 112.

<sup>158</sup> Ibid... page 114.

<sup>159</sup> Ramban's commentary on Deuteronomy 6:17-18. See also *takkanot* based on this principle at BT *Baba Metzia* 108a.

Why was not the entire Torah given in written form?...[T]he law of God cannot be perfect so as to be adequate for all times, because the ever new details of human relations, their customs and their acts, are too numerous to be embraced in a book. Therefore Moses was given only certain general principles,...by means of which the wise men in every generation may work out the details.<sup>160</sup>

Indeed, the Torah itself instructs Jews to hearken to their leaders to render new decisions appropriate for their historical circumstances.<sup>161</sup>

Legislation employing the rationale *mipnei darkhei shalom* falls under the category of *takkanah* better than *gezerah*. This is because these pieces of legislation do not rest upon biblical foundations, but rather extend beyond scriptural teachings. Furthermore, these laws do not so much protect Jews from transgressing specific religious practices as they enjoin Jews to engage in certain practices for a particular purpose. On the other hand, these laws reflect a concern on the part of the rabbis: there was a gap between legally sanctioned behaviors vis a vis gentiles and what was morally desirable. Early rabbis gave expression to the "presence of a moral interest as the basis for Tannaitic legislation" by creating and employing *mipnei darkhei shalom*.<sup>162</sup> Its legislative purpose "is the prevention of communal conflict which would result from some immoral practice not otherwise limited by law."<sup>163</sup> Similarly, "*mipnei darkhei shalom* is a *takkanah* whose purpose is to establish peace among peoples, to cut down on

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<sup>160</sup> *Sefer Ha'Ikkanim*. 3:23. As found in Wurzbarger, *Ethics of Responsibility: Pluralistic Approaches to Covenantal Ethics*, page 27.

<sup>161</sup> Deuteronomy 32:7.

<sup>162</sup> Saul Berman, "Law and Morality," in *Principles of Jewish Law*, ed. Menachem Elon (Jerusalem: Keter Publishing House, 1975), page 154.

<sup>163</sup> *Ibid.*... page 154.



disputes and arguments."<sup>164</sup> In conflict resolution terms, policies to prevent communal conflict by diminishing disputes work toward establishing a 'negative peace' in which overt hostilities do not manifest. This is distinct from an ambience of 'positive peace' where relations are congenial if not outright mutually supportive. A closer look at the various enactments surveyed here suggests that, at least in regard to Jewish-gentile relations, *takkanot* employing *mipnei darkhei shalom*, many of which are pragmatic in orientation, nevertheless promote positive peace.

The economic *takkanot* address three major issues: societal poor, tools, and taxation. The earliest *takkanah* regarding the poor was framed by the Tannaim in the negative: "do not prevent poor gentiles from *leket*..." The Amoraim inverted this injunction: "provide sustenance for the poor." In this discussion through the centuries opinions varied regarding the level of obligation Israelites were to consider this duty (as permission or as *mitzvah* – commandment), and regarding whether the presence of poor Israelites was necessary for this injunction to be applicable. Protecting gentile tools for the sake of peace proved more convincing than concern about thievery. And taxation policies should draw appropriately from both Jewish and gentile communities; no one was exempt from contributing to common coffers.

We can analyze these *takkanot* at two levels. At a descriptive level, these decrees paint a picture of Jews interacting close enough to appreciate the need to protect gentile means of production, to be exposed to gentile poor, and to work collaboratively with gentile tax collectors. This does not mean Jews and gentiles were economically integrated; just that there were substantial encounters in a variety of economic venues.

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<sup>164</sup> Joseph Schechter, as found in Lipman, E. J. "Mipnei Tikkun Ha'Olam in the Talmud: a preliminary exploration," in Edelheit J.A. (ed.) *The Life of Covenant*. Chicago: Spertus College of Judaica

At a legal level, these enactments promote social welfare by encouraging Israelites to go beyond the letter of the law. Even though biblical law does not explicitly stipulate caring for gentile poor or protecting gentile means of production, for example, Jews should nonetheless extend to gentiles the care afforded fellow Jews in these regards. Why? *Mipnei darkhei shalom* – for the sake of peace. Though pragmatic on the surface, this rationale justifies going beyond the law (*lifnim meshurat hadin*) for a greater purpose.

In the realm of social relations, *takkanot* employing *mipnei darkhei shalom* address three arenas: conversation with gentiles, caring for the sick, and attending to the dead and mourning. Conversing with gentiles, even encouraging them in their affairs, during the sabbatical year, or for that matter during gentile holidays, was at best reluctantly permitted by early rabbis. Opinion varied about the extent, tone and location of such conversations. Throughout the centuries rabbis commented on the need for Jews to care for gentile sick. More stringent jurists thought this duty applied only when ill Israelites were also present. Others, however, thought that regardless of who was present, Israelites should (even as a *mitzvah*) attend to the ill. Similar patterns obtain in regard to caring for dead and mourning gentiles. While some jurists thought Israelite duty in these arenas applies only with the presence of dead and mourning Israelites, the majority of scholars rule that regardless of who is or is not present, Israelites should bury the dead and comfort mourners.

At a descriptive level, these social *takkanot* show Jews being aware of and knew details about gentile holidays and religious practices, enough to distinguish which holidays were pure idolatry and which were not. Jews knew of the movements of gentiles through public spaces, had exposure to sick gentiles, and encountered dead

gentiles not infrequently. At a legal level, these enactments call for acts of commission, not omission. These are to be acts beyond the letter of the law, but not necessarily beyond the spirit of the law. The various opinions offering stringencies or limitations reflect a concern that the rationale *mipnei darkhei shalom* cannot justify universal humanism. On the other hand, these *takkanot* on health care reflect an ethical sensibility that all humans, regardless of religion, deserve Jewish attention.

What, then, would be the reasons for employing this rationale for all these *takkanot*? Were these enactments created "as expediency measures dictated by the enlightened self-interest of the Jewish community," or were they reflecting "a supreme ethical principle which transcends purely pragmatic considerations"?<sup>165</sup> Wurzburger offers insights to answer this question:

It might well be argued that ultimately our concern for "the ways of peace" in our relationship with the non-Jewish world stems ultimately from Jewish self-interest. Obviously, the well-being of the Jewish community would be adversely affected by inviting friction with the non-Jewish community. Thus, it would be only the moral and religious imperative to insure the stability and security of the Jewish Community that would serve as the matrix for the enactment of regulations aiming to remove grounds for friction with the non-Jewish community. With such an approach to *Darkei Shalom* there would be totally absent from the Jewish value structure any intrinsic concern for the well being of those outside of the Jewish covenantal community. We would be left only with counsels for enlightened self-interest.

In contrast with this ethnocentric conception one might with the same degree of plausibility advance the thesis that "the ways of peace" and, for that matter, considerations of "*eivah*" reflect an overriding universal moral principle. Accordingly, *Darkei Shalom* would provide the matrix for binding moral obligations extending the range and scope of legalistic requirements. In this conception, *Darkei Shalom* supplements legalistic formulations and adds a moral dimension of universal significance.<sup>166</sup>

Were *mipnei darkhei shalom* merely a tool for enlightened self-interest, its employment would be to remove possible sources of friction between Jews and gentiles in every instance. Furthermore, such a self-centered reasoning finds evidence in those legists who argue that Jewish obligation to non-Jews is contingent on circumstances. On the other hand, if *mipnei darkhei shalom* was merely a universal ethical principle, then concern for the well-being of those outside the covenantal community carries the same weight as concern for those inside the community.

As a case in point for this last assumption, Maimonides, according to Wurzburger, conceived *mipnei darkhei shalom* as an ethical religious norm because Maimonides links this rationale with the biblical verse "God is good to all and God's compassion extends to all God's creatures."<sup>167</sup> Elsewhere, Maimonides asserts "with respect to the moral attributes of God that we are commanded to imitate, it is said, "and God's compassion extends to all God's creatures."<sup>168</sup> In so doing, Maimonides guards "against the

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<sup>165</sup> Wurzburger, "Darkei Shalom," page 80.

<sup>166</sup> Ibid. page 83.

<sup>167</sup> Psalms 145:9. See Mishneh Torah. *Melachim* 10:12.

<sup>168</sup> Mishneh Torah. *Evedim*. 9:8.

misconception that the various laws mandating philanthropy to non-Jews are merely devised to serve Jewish self-interest."<sup>169</sup> Rather, Maimonides understands rules based on *mipnei darkhei shalom* as agent-morality rules, that is, rules that make no distinction between those who are of the covenantal community and those who are not. (Act-morality rules, however, do make such a distinction.<sup>170</sup>) Put in other terms, *mipnei darkhei shalom* as a rationale concerns the character disposition of a person, and as such is related to virtue.

What is a virtue? MacIntyre defines a virtue as "an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which effectively prevent us from achieving any such goods."<sup>171</sup> A virtue shapes human character, which is to be understood as the reward in and of itself for being virtuous. "In order that [a virtue to] be effective in producing the internal goods which are the rewards of the virtues it should be exercised without regard to consequences."<sup>172</sup> Additionally, a virtue is one only to the extent that it is a quality contributing to the good of a whole life.<sup>173</sup> Finally, virtues are those qualities which sustain "those traditions which provide both practices and individual lives their necessary historical context."<sup>174</sup> Virtues necessarily historically locate the virtuous, because a virtue "always requires for its application the acceptance for some prior account of certain features of social and moral life in terms of which it has to be defined and

<sup>169</sup> Wurzbarger, *Ethics of Responsibility: Pluralistic Approaches to Covenantal Ethics*, page 51.  
<sup>170</sup> See Ibid. Chapter 5.

<sup>171</sup> Alasdair C. MacIntyre, *After Virtue: A Study in Moral Theory*, 2nd ed. (Notre Dame, Ind.: University of Notre Dame Press, 1984), page 191.

<sup>172</sup> Ibid. page 198.

<sup>173</sup> Ibid. page 273.

<sup>174</sup> Ibid. page 223.

explained."<sup>175</sup> Laws or even advice about being virtuous have within them a sense of boundedness: they are linked to that which has been valued prior for a particular community and, as such, cannot be considered universal in scope. To argue that *mipnei darkhei shalom* only promotes the development of virtues renders internal their rewards and historical their relevance.

And if *mipnei darkhei shalom* were only concerned with virtue, why then did the rabbis employ this rationale for such communal issues as taxation and offering eulogies? While these *takkanot* do, in some degree, relate with the virtue of considering others (see concluding chapter for further discussion of this), we would be hard pressed to say that these particular *takkanot* speak only of virtue. Rather, some *takkanot* employing *mipnei darkhei shalom* point more toward a recognition that Jews ought to consider others not so much for *imitatio Dei* but for a desire not to exacerbate economic and social relations with non-Jews – that is, these *takkanot* have pragmatic political purposes above and beyond considerations of personal character.

*Mipnei darkhei shalom* provides a basis to go beyond the letter of the law by contemplating the political nature of behaviors. Moreover, *mipnei darkhei shalom* extends the obligations Jews are to observe by requiring behavior neither prohibited nor demanded by Torah law. In brief, *mipnei darkhei shalom* is a stringency, offering more precise guidance for behavior toward non-Jews than the *halakhah* otherwise provides.

By being concerned about the character traits of Jews, the behaviors Jews should manifest toward non-Jews, and (to some degree) the welfare of gentiles, *mipnei darkhei shalom* is simultaneously a rationale for agent-morality and act-morality – in Wurzburger's terms, and both virtue ethics and political ethics in MacIntyre's terms.

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<sup>175</sup> Ibid. page 186.

Adhering to sometimes politically motivated economic and social *takkanot* employing *mipnei darkhei shalom* reflects and instills a universal ethical impulse.

While it might be concluded from the evidence that *darkhei shalom* possessed differing meanings, depending on the context, 'ranging from mere considerations of expediency to the loftiest moral maxims,' still – even in modern terms – more than practical interest seems to have been at work within the majority of these applications. The preparedness to propose reasonably dramatic alterations in the law appears to have been imbued with a higher ethical purpose.<sup>176</sup>

Advancing character virtue as well as enhancing relations between Jews and gentiles, that Jews can and should care for society's poor, ill, dead and mourning, regardless of religion, suggest that positive peace has long been an ardent goal of rabbinic legislation.

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<sup>176</sup> Schiff, "Principles of Power: The Application of Ethical Norms within the Halacha". page 40.

## CHAPTER 3

### *Mipnei Eivah*

Rabbinic concern that relations with gentiles not turn sour prompted legislation permitting otherwise prohibited Israelite behavior toward gentiles. The rabbis created a rationale to justify such reforms: *mipnei eivah*<sup>177</sup> – because of the fear arousing enmity.<sup>178</sup> Similar to *takkanot mipnei darkhei shalom*, *takkanot mipnei eivah* are applied to a vast array of life. But, as one might expect, there are significant differences. As we saw in the previous chapter, *mipnei darkhei shalom* is applied primarily to issues of economic and social relations; there were no *takkanot* on religious interactions with that rationale. *Mipnei eivah*, on the other hand, primarily is deployed as a rationale justifying changes of behavior in economic and religious relations, and less so in social relations.

Unlike *mipnei darkhei shalom*, the rationale *mipnei eivah* is not a Tannaitic invention. In fact, the term *eivah* is found only three times in Tannaitic literature.<sup>179</sup> The

<sup>177</sup> Another form of this rationale is also common: *niishum eivah*. I prefer to use *mipnei eivah* to maintain parallelism with *mipnei darkhei shalom*.

<sup>178</sup> I try to use *eivah* as much as possible because the rationale's complexity is not adequately expressed by "because of enmity" or "because of a fear of arousing enmity."

<sup>179</sup> Mishnah *Avot* 4:7; Tosefta *Shabbat* 13.5; Tosefta *Beitza* 4:10.



two Tosefta sources speak of preventing enmity between spouses in a home, and arousing ill-will at Jewish celebrations. The Mishnah, on the other hand, encourages a judge to restrain from passing a verdict that might arouse enmity from the losing party. *Eivah* was merely a minor concern for Tannaim. For the Amoraim, however, enmity became a concern so much so that they incorporated it into their legislation. Both the Babylonian Talmud (16 times in 13 places) and Jerusalem Talmud (8 times in 4 places) include *takkanot mipnei eivah*. Evidence exists of Amoraim reading *eivah* reasoning into Tannaitic legislation, as will be illustrated below.<sup>180</sup> Among medieval scholars the term was used only fourteen times. Joseph Karo cited it more frequently in his Beit Yosef (33 times) than in the Shulchan Arukh (9 times). Over the past millennium or so of *responsa* literature, *mipnei eivah* has been used over 500 times. Like *mipnei darkhei shalom*, *mipnei eivah* endures as a rationale. This chapter explores how *mipnei eivah* is used through the centuries in regard to gentiles.

### Economic Relations

During the Tannaitic period, the rabbis sought to establish clear boundaries of what were acceptable and not acceptable business relations with gentiles, especially those whom the rabbis deemed as idolaters. A whole *masechet*, or section, of the Mishnah (and hence of the Talmud as well), is devoted to this discussion. The first rule the Tannaim enact in the Mishnah concerns timing: when should an Israelite not transact with a gentile? Three days prior to an idolatrous festival, the Tannaim assert.<sup>181</sup> The *mishnah* continues: Israelites are forbidden to lend to or borrow from gentiles, to give or take loans

<sup>180</sup> See also Berman, "Law and Morality,".

<sup>181</sup> Mishnah *Avodah Zarah* 1.1.

from them, to clear debts or collect debts from them. No rationale is provided for this massive curtailment of business three days prior to an idolatrous festival. Yet R. Yehudah permits the collection of debts from gentiles because it saddens them (*metzer lo*). Other Tannaitic rabbis disagreed with R. Yehudah's logic: though a gentile might be sad now for having to pay back a loan (to an Israelite) just before an idolatrous festival, that same gentile may rejoice later on because that obligation to the Israelite no longer exists. *Halakhah*, the law, goes with the majority: no business should be done. The rationale the Tannaim provide justifying their legislation is concern about gentile action or feelings in reaction to Israelite business affairs. Thinking about a rule's possible affect on others, especially gentiles, infuses how *mipnei eivah* emerges as a rationale and is employed by later legists.

R. Ishmael, in the second *mishnah* in this *masechet* about idolaters, thinks Israelites ought not transact with gentiles three days prior and three days after an idolatrous festival. Other sages disagree, saying that only during the three days prior to a festival is transaction forbidden; afterwards, transaction is permitted.<sup>182</sup> Perhaps R. Ishmael, a second generation Tanna, may have considered the gentile calendar one with few holidays.<sup>183</sup> Other Tannaim, however, argued that regardless of the number of gentile holidays, the prohibition to transact should apply only prior to their holidays. Medieval *Tosafists*, scholars of the 11<sup>th</sup>-13<sup>th</sup> Centuries in Ashkenaz, brought this second *mishnah* to bear on the first *mishnah*.<sup>184</sup> They point out that gentiles have holy days

<sup>182</sup> *Mishnah Avodah Zarah* 1.2.

<sup>183</sup> See discussion in *BT Avodah Zarah* 6a-8b.

<sup>184</sup> *Tosafot*. *BT Avodah Zarah*. 2a. *asur*.

(called saints' days) on Sunday each week.<sup>185</sup> According to R. Ishmael's ruling, economic transactions would be prohibited the whole week for eternity, which would be unsustainable for the Jewish community. Despite an argument in the *gemara*<sup>186</sup> that the prohibition to transact on the day of a gentile festival applies even outside the land of Israel, the Tosafists conclude that transaction, prior and during a gentile festival, is permitted *mipnei eivah*. They base this conclusion on a different teaching in the *gemara* in which an idolater sent R. Judah Ha-Nasi a monetary gift<sup>187</sup> on the day of a pagan festival.<sup>188</sup> In order not to provoke enmity, R. Judah accepted the gift. Seeking justification for the Mishnah's prohibition of transacting with gentiles, the Tosafists apply this later rabbinic rationale (Amoraic) to the earlier Tannaitic rule, and simultaneously employ this same rationale to subvert the seemingly universal scope of the Tannaitic rule. Another Tosafist also rules leniently: R. Tam allows business even on gentile holidays not because of *eivah*, but rather because transacting does not automatically aid and abet idolatry.<sup>189</sup>

Maimonides ruled that receiving from or giving a monetary gift to gentiles on the day of their festivals is permitted only in the instance where one knows that the gentiles do not engage in idolatry, or that there might be suspicion of arousing enmity (*im chashash l'eivah*).<sup>190</sup> In 13<sup>th</sup> Century Spain, the prohibition of giving monetary gifts to gentiles was considered rabbinic (*isurei d'rabbanan*) and based upon the fear that a

<sup>185</sup> Maimonides' *Mishneh Torah Avodah Zarah* 9:4 mentions that idolaters ('*akum*) have a holiday on the first day of the week (which is Sunday). In the Kehati edition, this reads *edumim* – Romans. In a different manuscript edition (Warsaw), however, it reads *k'na'anim* – Canaanites (see also the Bar Ilan CD). It may be that the original read *nokhrim* but has since been censored.

<sup>186</sup> BT *Avodah Zarah* 7b.

<sup>187</sup> In regard to religious objects, see the section below on religious interactions.

<sup>188</sup> BT *Avodah Zarah* 6b.

<sup>189</sup> Tosafot, BT *Avodah Zarah*, 2a. *asur*. I appreciate Alyssa Gray's reference to this text.

<sup>190</sup> *Mishneh Torah. Avodah Zarah*, 9.2 (*cutim* used here)

Jewish gift would spur gentile idolatry. Nevertheless, Jews were permitted to give such gifts.<sup>191</sup> The Shulchan Arukh, ruling according to the Talmud, granted permission to receive monetary gifts from gentiles even on the day of pagan holidays, only if there was suspicion of *eivah*; permission to send gifts to gentile is granted only if it is known the gentile does not practice idolatry.<sup>192</sup>

*Eivah* also inspired other economic *takkanot*. The rabbis urged Israelites to be concerned about gentile business. The bible, using the motif of an ox and its burden, enjoins Jews to attend to the welfare of a beast of burden and to its owner when things go awry.<sup>193</sup> We should remember that a beast of burden was essential for many people's businesses: without a healthy animal, a farmer could not plow, a merchant could not get products to market, a courier could not transport goods. The rabbis use this motif for a discussion of economic fairness. The Tannaim legislated Israelite assistance when a burden falls from an ox's back.<sup>194</sup> The Amoraic discussion on this rule integrates the principle of preventing unnecessary suffering on animals (*tza'ar ba'alei chayim*):

אי אמרת בשלמא צער בעלי חיים דאורייתא - משום דכי מטפל בה כבודת ישראל. אלא אי אמרת צער בעלי חיים לאו דאורייתא, אמאי מטפל בה כבודת ישראל? - התם משום איבה.

Shall we say [the following *baraita*] supports this argument [that preventing animal suffering is from the Toah]? A gentile<sup>195</sup> beast [whose load has fallen, an Israelite should] attend to it [just as an Israelite would attend to] an Israelite beast [whose load has fallen]. It is better you say that *tza'ar ba'alei chayim* is a Toraitic principle, because then attending to

<sup>191</sup> *Chidushei HaRitba. Avodah Zarah 9a. v'eima 'ad d'achil mamash.*

<sup>192</sup> Shulchan Arukh. *Yoreh Deah* 148.5. See also BT *Avodah Zarah* 65a; Tur *Yoreh Deah* 148.

<sup>193</sup> See Exodus 23:5, Deuteronomy 22:4.

<sup>194</sup> Mishnah *Baba Metzia*. 2:10.

<sup>195</sup> In the Vilna *Shas*, this reads '*akum*, and Steinsaltz reads *nocrhi*.

[the gentile's beast] would be [just as obligatory] as [attending] to an Israelite beast. But if you say that *tza'ar ba'alei chayim* is not a Toraitic principle, why [does the *baraita* teach that] an Israelite [should] attend to [the gentile's beast] as [one would attend] an Israelite's beast? In that case, the [rationale would be] because of enmity.<sup>196</sup>

The Amoraic opinion avers that Israelites ought to assist gentiles when a gentile's beast collapses. By asserting *tza'ar ba'alei chayim* a Toraitic principle, the rabbis render obligatory the task of assisting gentiles and the rationale itself more authoritative than rabbinic rationales. Were *tza'ar ba'alei chayim* merely a rabbinic principle, *eivah* would suffice to justify legislating Israelite assistance. Obviously, a Toraitic (*d'oraita*) principle is more authoritative than a rabbinic one (*d'rabbanan*). Either way, Israelites ought to provide assistance to gentiles should their means of economic sustenance collapse.

Rashi echoes this argumentation. He states that if one conceives of *tza'ar ba'alei chayim* as not *d'oraita* and the only rationale justifying assistance is *eivah*, then an Israelite is not bound to offer assistance, and in fact could assert that helping the gentile whose beast has collapsed is forbidden.<sup>197</sup> Steinsaltz, in his editorial comments on the Talmud, writes that if this principle were not *d'oraita*, it would not be a commandment (*mitzvah*). Therefore, assisting a gentile would be justified only because of *eivah*, and not because it was a religious obligation.<sup>198</sup> At stake here is superimposing a rabbinic rationale (*mipnei eivah*) over a Toraitic principle (*tza'ar ba'alei chayim*) which carries religious urgency as a commandment. Rashi and Steinsaltz, it seems, argue along with

<sup>196</sup> BT *Baba Metzia*. 32b.

<sup>197</sup> Rashi on BT *Baba Metzia* 32b. *i amarta lav d'oraita*.

<sup>198</sup> Steinsaltz edition BT *Baba Metzia* 32b. *hatam...* (*nokhrim* found here)

the *gemara*, that *tza'ar ba'alei chayim* is more authoritative than *eivah* as a rationale justifying legislation for Israelite intervention when a gentile's beast collapses.

Maimonides, on the other hand, does not refer to *tza'ar ba'alei chayim* in his rendition of this obligation to assist a gentile whose beast has collapsed. Rather, he uses the principle *mishum tza'ar Yisrael* – preventing suffering to an Israelite.<sup>199</sup>

כרמת הגוי והמשא של ישראל אם היה הגוי מחמר אחר כרמתו אינו זקוק לה, ואם לאו חייב לפרוק ולטעון משום צער ישראל, ובן אם היתה הכרמה של ישראל והמשוי של גוי חייב לפרוק ולטעון משום צער ישראל אבל כרמת הגוי ומשאו אינו חייב להטפל בהן אלא משום איבה.

[Regarding] a gentile's beast with an Israelite's burden, if the gentile guides from behind the beast, an Israelite is not obliged [to assist, because the gentile could see the beast collapsing or the burden falling and could have prevented the problem in the first place]. But if the gentile does not [guide from behind,] an Israelite is obliged [to assist] untying and tying the burden because of suffering to the Israelite. Similarly, if the beast were an Israelite's and the burden was a gentile's, an Israelite is obliged in untying and tying the burden because of suffering to the Israelite. But, if the beast were a gentile's and so were the burden, an Israelite is obliged to assist only because of *eivah*.<sup>200</sup>

Following a midrashic compilation,<sup>201</sup> Maimonides hereby describes a hierarchy of rationales. By rejecting the Amoraic argument of a Toraitic principle regarding animal suffering as a legitimate justification for Israelite intervention and instead using a new

<sup>199</sup> Interestingly, this phrase appears only nine times (according to the Bar Ilan CD) in the broader Jewish library, beginning with *midrash halakhah*, and is associated only with this issue of a beast, its burden, and an Israelite's responsibility to assist a gentile getting back on the road.

<sup>200</sup> *Mishneh Torah. Rotzeach U'Shmirat Nafesh. 13.9.*

<sup>201</sup> *Midrash Tanayim to Deuteronomy. 22:4.*

rationale, Maimonides simultaneously suppresses concern for animal welfare, elevates concern about potential Israelite suffering (that is, economic loss), and supercedes a *d'oraita* principle with a *d'rabbanan* principle.<sup>202</sup> Furthermore, Maimonides specifies when Israelite intervention is justified because of enmity: only in that instance when the means and the product are a gentile's. Note that Maimonides does not encourage offering assistance when either the beast or the burden is a gentile's because it would alleviate gentile suffering. In fact, even in the last case where both beast and burden are a gentile's does Maimonides similarly exclude possible gentile suffering as a rationale to oblige Israelite intervention. Rather, gentile suffering is completely ignored. Prevention of possible enmity between Jews and gentiles is as close to concern for the other as Maimonides gets. Concern in this *takkanah* is solely pragmatic: Israelite well-being takes precedence over other concerns. The Shulchan Arukh echoes Maimonides,<sup>203</sup> as do 20<sup>th</sup> Century rabbinic opinions.<sup>204</sup> Put bluntly, ethics is not a concern here; law is.

In a different corner of economic interactions between Jews and gentiles, rabbis recognized that certain Jews were adept at helping non-Jews during childbirth. While some of this discussion falls under the arenas of religious and social relations, pieces of the conversation have economic themes and deserve attention here. The Tannaim forbade a Jewish woman assisting a gentile<sup>205</sup> giving birth, as well as nursing a gentile child.<sup>206</sup> The related Amoraic *sugya* presents a disagreement between R. Joseph and R. Abaye.<sup>207</sup> R. Joseph argues that an Israelite woman may assist in childbirth for pay

<sup>202</sup> See *Tzitz Eliezer Responsa*, II:3:4. *Hazeh*.

<sup>203</sup> *Shulchan Arukh. Choshen Mishpat* 282.8-9.

<sup>204</sup> See R. Pinchas Zvichi's *'Ateret Paz Responsa* I:3 *Choshen Mishpat* 7.3; R. Ovadia Yossef's *Yechaveh Da'at Responsa*, 5.65: *u'me'ata nir'eh*.

<sup>205</sup> *Nokhri* according to Kehati, *'akum* according to Vilna Shas.

<sup>206</sup> *Mishnah Avodah Zarah* 2.1.

<sup>207</sup> *BT Avodah Zarah* 26a.

because of fears of enmity. She should say "I will assist this gentile giving birth on Shabbat for pay because [otherwise] it might cause enmity." Abaye, however, would rather have the Israelite woman say to the gentile "For [the sake of delivering] our [young], who observe Shabbat, we desecrate [Shabbat. But for the sake of delivering] your [young], who do not observe Shabbat, we do not desecrate [Shabbat.]." Further on, R. Joseph permits a Jewess offering to suckle a gentile child for pay because of enmity; Abaye demurs by offering two excuses the Jewess can provide to avoid nursing a gentile infant.<sup>208</sup> *Eivah* is not a central concern for Abaye.

The medieval Tosafists bring this *baraita* to question a different teaching that did not permit a Jewess to midwife. The argument goes as follows: it did not come to the mind of the author of the *mishnah* that a Jewess would midwife for free, for the only concern expressed in the *mishnah* is that the gentile child would grow to become an idolater. No exceptions were allowed. R. Joseph, however, avers that other things need to be taken into consideration than just concern about a potential idolater. If, for example, a gentile offers payment for a Jewess' midwifery service, then performing such service is permitted. Why? *Mipnei eivah*. Payment did not arise as a factor in the *mishnaic* mindset, nor in the first *baraita*. R. Joseph argues that even so, if hostility were probable, a Jewess may midwife by first agreeing to extract from the gentile payment for her services, thereby avoiding the obvious forbidden action of midwifing for free. Again, a pragmatic concern takes priority: sign a contract, do the job, avoid enmity.

R. Yom Tov ben Abraham Ishbili in 13<sup>th</sup> Century Spain made a rule that if it is known that a gentile will not accept excuses or rationales for why a qualified Israelite cannot assist at a childbirth on Shabbat, the Israelite is permitted to help the gentile give

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<sup>208</sup> BT *Avodah Zarah*. 26a.



birth regardless if it is for pay or for free, in every instance where there might be hostility.<sup>209</sup> R. Shabbetai ben Meir Ha-Kohen echoes this sentiment in his comment on the Shulchan Arukh.<sup>210</sup> Maimonides disagreed on a more general point about healing. Only in those instances where there is fear of gentiles or suspicion of *eivah* if assistance is not provided, is an Israelite obliged to provide healing services but only for pay; assisting for free is prohibited.<sup>211</sup>

### Religious Interactions

The issue of women assisting in a gentile's birthing carries religious overtones, too. According to the *mishnah* cited above, an Israelite woman is forbidden to serve as a midwife for a gentile woman because the child may engage in idolatry (*mipnei shem 'yaledet ben la'avodah zarah*).<sup>212</sup> On the other hand, a gentile woman may midwife for a Jewess. The *mishnah* similarly asserts that a Jewess ought not suckle a gentile child, though a gentile woman may nurse a Jewish child in the Jewess' home. To be clear: a Jewess is prohibited giving services (midwife and nursing); but receiving services (midwife and nursing) from a gentile is permitted (with limitations).

The *gemara* cites two *baraitaot* in disagreement with the *mishnah*'s teaching. Both *baraitaot* concur with the *mishnah* in regard to giving services: a Jewess is prohibited. Why? Because the gentile infant may become an idolator. But in regard to receiving services from a gentile, both *baraitaot* disagree with the *mishnah*'s relative

<sup>209</sup> *Chidushei HaRitba* on BT *Avodah Zarah* 26a. Commentary to Ritba offers this interpretation: "if a gentile wants to give money to [a Jewess], this is permitted because of possible enmity, even if the Jewess does not accept the money." That is, a Jewess need not necessarily take the money offered for her services; but money must be offered so that the gentile would not think the Jewess serves for free. See note 125, page 105.

<sup>210</sup> Shakh on Shulchan Arukh. *Yoreh Deah*. 154:2.

<sup>211</sup> *Mishneh Torah*. *Hilkhot Avodah Zarah* 10:2. See also Shulchan Arukh *Yoreh Deah* 158.1

permissiveness. "A gentile woman may not midwife a Jewess because the gentile is suspected [of possible] murder (*mipnei shechoshdin 'al sh'fichut damim*) – says R. Meir. The sages opine that a gentile woman may midwife a Jewish child but only when other [Israelite] women stand over her, but not in private." R. Meir rejects even supervised midwifery because the gentile woman may discretely kill the infant.<sup>213</sup> The second *baraita* in reference to nursing follows the pattern of the first. Of importance here is R. Meir's linking the gentile with a suspicion of murder.

Presenting these *baraitaot* suggests that the *mishnaic* argument allowing limited interaction between Jewish and gentile women during birthing was ill-founded. While the *mishnah* allows a gentile woman to assist a Jewess in birth and nursing, the *baraitaot* prohibit even this interaction. However, the rationale ascribed to the complete prohibition is not one based on religious concerns (because the (Jewish) child might become an idolater), but one based on sociological fears (because the gentile woman is suspect of possibly becoming or being a murderer). Though not explicitly contradicting the *mishnah*, the *baraita* adds a further stringency to the principle of limited exposure to gentiles.

The *sugya* then continues with a contrasting statement that a Jewess may midwife a gentile for pay, which R. Joseph permits, even on Shabbat – as discussed in the section above. As a reminder, Abaye offered two statements a woman can say to absolve herself of such duties. Medieval Tosafists assert that even according to Abaye's argument, were *eivah* a possibility, a Jewess may midwife and for pay even on Shabbat.<sup>214</sup> But then the Tosafists question if this would entail transgressing a biblical prohibition (*isura d'oraita*).

<sup>212</sup> *Mishnah. Avodah Zarah. 2.1*

<sup>213</sup> Gemara on BT *Avodah Zarah* 26a. Vilna edition uses '*akum*'.

Referring to elsewhere in the Talmud,<sup>215</sup> the Tosafists compare this situation with one who puts his hands inside an animal's womb and shakes the fetus from its place and is thus liable for "tearing a thing from its growth" (which is a subset of the Shabbat prohibitions called "shearing"). If one followed this logic, then a Jewess midwifing on Shabbat would be transgressing a *d'oraita* prohibition of "shearing." The Tosafists, however, argue that the situation is otherwise. A Jewess midwifing a gentile would take place only when the gentile already sits astride her birthing stone and the fetus has already torn itself from its roots and has begun to emerge, or alternatively, when the fetus has completed its term and has stopped its growth. In these scenarios, a Jewess is not "tearing a thing from its growth" because it (the fetus) has either (a) torn itself from its roots, or (b) has stopped growing (according to this logic). The Tosafists thus render midwifing as neither a transgression of *isurei d'oraita* or *isurei d'rabbanan* (rabbinic prohibitions). In fact, they render midwifing a neutral duty which, especially in the case of *eivah*, may be done on Shabbat with no penalty.

Maimonides interweaves all these concerns about midwifery, suckling, idolatry and murder.

בת ישראל לא תניק את בנה של עובדת כוכבים מפני שמגדלת בן לעבודת כוכבים ולא תיילד  
את הנכרית עכו"ם אבל מילדת היא בשבר משום איבה והנכרית עכו"ם מילדת את בת ישראל  
ומניקה את בנה ברשותה כדי שלא תהרגו.

A Jewess shall not suckle a child of an idolater because the child may grow to become an idolater. Nor shall a Jewess midwife a gentile idolater, although she may deliver it for pay because of *eivah*. A gentile idolater

<sup>214</sup> Tosafot, BT *Avodah Zarah* 26a. *savar rav yosef*...

<sup>215</sup> BT *Shabbat* 107b.

may midwife a Jewess and may suckle the Jewish child in her own home  
so that she will not kill it.<sup>216</sup>

The prohibitions for a Jewess are based on religious concerns; the permissions granted a gentile are founded on sociological concerns. The exception to these is the permission afforded a Jewess to midwife a gentile for pay because of *eivah*. Is this a religiously or sociologically inspired concession? Either way, *mipnei eivah* apparently outweighs both religious fears of spreading idolatry and sociological concerns of murderous neighbors. The consolation is that a Jewess can and must secure payment for her services.<sup>217</sup>

The rabbis also applied *mipnei eivah* to other religious affairs. The *anshei ma'amad* – the men who accompanied sacrifices and offered prayers in Jerusalem – would fast four days during the week.<sup>218</sup> According to the Tannaim, these four fasts were from Monday to Thursday. They did not fast on Friday, because of the honor of Shabbat, and nor would they fast on Sunday, “so that they would not go out from rest and enjoyment [i.e., Shabbat] to weariness and fast, and might die.”<sup>219</sup> The Amoraim understood the reasoning for not fasting on Friday, and certainly not on Shabbat itself. But they wondered why the *anshei ma'amad* would not fast on Sunday. R. Yochanan said, “because of the gentiles” (*mipnei hanotzrim*).<sup>220</sup> Rashi interpreted this as “they make [Sunday] a holiday for themselves.”<sup>221</sup> Steinsaltz explains that the *gemara* included R. Yochanan’s statement so that Israel would take this fact into consideration.<sup>222</sup> Fasting on this particular day would possibly arouse anger (*ko'asim*) among the gentiles –

<sup>216</sup> Mishneh Torah. *Avodah Zarah* 9:16. Bar Ilan CD edition.

<sup>217</sup> For a different opinion altogether but without any rationales, see *Shulchan Arukh Yoreh Deah* 154:1.

<sup>218</sup> Mishnah. *Ta'anit*. 4.3.

<sup>219</sup> Kehatti translation.

<sup>220</sup> BT *Ta'anit*. 27b. Other rabbis offered their opinions, but these do not interest us here.

<sup>221</sup> Rashi on BT *Ta'anit* 27b. *mipnei hanotzrim*.

<sup>222</sup> *Vayomru sh'af Yisrael m'chashivim oto*.

*notzrim* – Christians.<sup>223</sup> Meiri, however, argued that the *notzrim* R. Yochanan refers to are the Babylonians, who established Sunday as their regular holiday; the sages did not make enactments (*lo tiknu*) for those special days.<sup>224</sup> Though factually incorrect, the Meiri's apologetic is understandable given his experience of disputations with Christians. Citing this *sugya*, R. Eliezer ben R. Yoel Halevi (1140-1220) in Ashkenaz reasoned that should an individual want to make a personal fast, he could, even possibly on Sunday although certainly not on Shabbat.<sup>225</sup> Preferred fast days, however, would remain Monday – Thursday.

Celebrating even a fast on the same day as a gentile holiday proved troublesome for the rabbis. But what of the case where gentiles invited a Jew to participate in a wedding feast? Some Acharonim were doubtful if *mipnei eivah* would grant permission for a Jew to partake at a wedding feast, even though there might be kosher food available.<sup>226</sup> Scripture charges Israelites to be vigilant against the temptations of idolatry and idolaters, especially those who "invite you to partake from his slaughtered sacrifice."<sup>227</sup> The Amoraim understood this biblical verse as an injunction against eating idolatrous sacrifices – and a gentile's wedding feast would be considered such a forbidden bounty.<sup>228</sup> Maimonides codifies this teaching with even more stringency: it is forbidden to eat at a gentile's feast even if Israelites controlled their own food, because, even so, they would be surrounded by idolaters.<sup>229</sup> Furthermore, Jews are forbidden at a gentile's house from the moment the gentile begins preparations for a feast until three

<sup>223</sup> According to *Encyclopedia Talmudit. Eivah*. Column 493. Note 57b.

<sup>224</sup> See 'Iyunim' at the bottom of Steinsaltz's edition.

<sup>225</sup> *Ra'avayah Ch'ag. Hilkhot Ta'anit*. 860. *u'vashem rabbeinu*.

<sup>226</sup> See BT *Avodah Zarah* 8a. *Encyclopedia Talmudit. Eivah*. Column 493. Note 59a.

<sup>227</sup> Exodus 34:15.

<sup>228</sup> BT *Avodah Zarah* 8a.

<sup>229</sup> *Mishneh Torah. Avodah Zarah* 9.15.

days after the feast, and even for a year after a feast celebrating betrothal. Maimonides declares that all these rules distancing Jews from gentiles are made because of idolatry, and are based on the scriptural verse cited above.

Karo expanded the temporal distance Jews were to observe. The Shulchan Arukh states that a Jew must not eat at a gentile's house for a full thirty days after a wedding feast. And a Jew is allowed to a gentile's home a year after a wedding celebration only if that gentile were an important person (*adam chashuv*).<sup>230</sup> This implies that non-important gentiles' homes even a year post-betrothal celebration are forbidden to Israelites. On the other hand, the Shakh cites the Prishah's assertion that there might be, even in this prohibition, a permission to celebrate with them because of *eivah*.<sup>231</sup> And yet, others argue that the rationale of distancing supercedes the rationale of enmity. The rationale *mipnei eivah* can only be invoked to overturn a prohibition based on any other rationale.<sup>232</sup>

On the subject of exchanging gifts, we have already seen rabbinic legislation about gifts of economic worth. How do the rabbis feel about exchanging religious objects? The Tosefta permits buying books, phylacteries and *mezzuzot* from gentiles as long as they are whole.<sup>233</sup> Selling these objects is permitted to a population called *'am ha'aretz* – the common folk – who are not suspect of employing these objects for idolatrous purposes.<sup>234</sup> But the Tannaim provided no such rationale for this transaction. It was R. Jacob ben Moses Moellin (1360-1427) of Ashkenaz who permitted selling

<sup>230</sup> Shulchan Arukh. *Yoreh Deah* 152.1

<sup>231</sup> Shakh on Shulchan Arukh. *Yoreh Deah* 152.1.

<sup>232</sup> See *Encyclopedia Talmudit*, *Eivah*. Column 493. Note 64.

<sup>233</sup> *Tosefta* BT *Avodah Zarah* 3:2. (*'akum*)

<sup>234</sup> *Minchat Bichorim* 3:2: *'am ha'aretz*. See also BT *Berachot* 47b where *'am ha'aretz* are described as Jews who are not punctilious in their observance of certain religious practices.

religious accoutrements to gentiles if there was suspicion of *eivah*.<sup>235</sup> R. Issachar Dov ben Israel Lazar Parnass Eilenburg (1550-1623) in Poland, argued that even in a place without a suspicion of *eivah*, selling *mezuzot* to gentiles is permitted.<sup>236</sup> Then again, R. Jacob ben Tzvi Emden (1697-1776) in Germany echoed the earlier opinion that suspicions of *eivah* renders permissible the selling of a *mezuzah* to a gentile.<sup>237</sup>

### Social Relations

In the sphere of social relations, we return again to the issue of midwifery. Contrary to the *mishnah* discussed above, a Tosefta offers greater social interaction: "a Jewess may midwife and suckle a child of a gentile, and a gentile woman may midwife and suckle a child of a Jewess."<sup>238</sup> Though the Tosefta quickly qualifies this overarching permissiveness with the discussion cited in the *gemara* (see above in the economic relations section), we nevertheless can conclude that in the absence of the fear of murder, a gentile may midwife and nurse a Jewish child, and vice versa.<sup>239</sup>

The Tosafists argue that in a case where a gentile woman already sits on her birthing stone and the fetus has emerged to a significant degree, or the fetus has completed its growth in the womb, a Jewess is permitted to midwife.<sup>240</sup> R. Mordecai bar Hillel, a 13<sup>th</sup> Century Ashkenaz scholar, thought it appropriate that if a Jewess left a city and there were other Israelite women remaining in that city, the Jewess may leave her child with a gentile for nursing.<sup>241</sup> This is because other Jewesses could check in on the

<sup>235</sup> *Maharil Responsa Chadashot* 123. *ela nomar lahalan*.

<sup>236</sup> *Be'er Sheva Responsa*. 36.

<sup>237</sup> *She'ilat Ye'avetz Responsa*, II:122. Refers to *nokhri*.

<sup>238</sup> Tosefta. BT *Avodah Zarah* 3.1. Shas edition refers to *cutim*.

<sup>239</sup> See also Isaiah 49:23.

<sup>240</sup> Tosafot. BT *Avodah Zarah* 26a. *savar rav yosef*...

<sup>241</sup> *Sefer Mordecai* on BT *Avodah Zarah* 26a. #812.

infant periodically. Even though permission was granted, the reality was otherwise. R. Yom Tov ben Abraham Ishbili describes 13<sup>th</sup> Century Spanish practices: "in all our lands, our custom is not to suckle with gentile milk at all, and this is a beautiful custom."<sup>242</sup>

On another issue, Jews are neither to save nor allow a gentile to die should a gentile be in a life threatening situation. A *baraita* teaches with respect to "idolaters, shepherds and small animals, we neither raise them [from a pit] nor lower them [into a pit]. [But, according to R. Joseph] raising [them] up [from a pit] for pay is permitted *mipnei eivah*. Abaye replied [that failing to raise them up need not spark animosity because the Jew can offer an excuse] by saying: 'my son stands on a roof [and I need to go save him]' or 'I have an appointment at the government office [which I must keep].'"<sup>243</sup> Abaye, again, offers two possible rationales for avoiding the obligation to lift a gentile from a pit: one to save a family member; the other based on a cost-benefit assessment: what would be lost from missing the government's appointment would be more than what the gentile is offering to pay.<sup>244</sup> Possible animosity, however, overshadows all other excuses when the gentile offers payment for life-saving assistance.

According to this *baraita*, Jews encountered gentile shepherds and idolaters in a variety of settings some of which endangered gentiles. Maimonides offers a different scenario: should a gentile be drowning in a river, a Jew should not save him because that gentile may wage war against the Jews.<sup>245</sup> Jews were to be indifferent to a gentile's plight unless and until payment for assistance is offered. In that instance, were payment be rejected and animosity occur, a Jew should assist. However, Abaye's explanations

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<sup>242</sup> *Chidushei Ritba* on BT *Avodah Zarah* 26a. *gemara*...

<sup>243</sup> BT *Avodah Zarah* 26a. Shas edition.

<sup>244</sup> See also Rashi on BT *Avodah Zarah* 26a. *nakita li zimna l'vei davar*.

<sup>245</sup> *Mishneh Torah. Avodah Zarah* 10.1



could excuse a Jew from assisting for pay and avoid incurring enmity. Though explicitly not concerned about *eivah*, Abaye would concede that if these excuses were not accepted, a Jew should assist and for pay at that.<sup>246</sup> According to Karo, the *halakhah* accords with Abaye.<sup>247</sup> But, according to Karo, even were *eivah* probable, a Jew is not obliged to save a gentile. If, however, it were a time of war, a Jew is obliged to kill the trapped gentile.<sup>248</sup>

### Conclusion

Of curious note is a discussion found in R. Yom Tov ben Abraham Ishbili's (Ritba) 13<sup>th</sup> Century commentary on the Talmud about the relationship between *eivah* and *d'oraita* and *d'rabbanan* prohibitions. He argues that in his day a prohibition *d'oraita* remains a prohibition because the Torah is not concerned about enmity.<sup>249</sup> An example he provides is eating at a gentile's feast: it is biblically prohibited to partake of that which has been sacrificed for idolatrous purposes. He also asserts that *isurei d'rabbanan* that included no rationales cannot be overturned and permitted because of enmity.<sup>250</sup> For example, rabbinic prohibitions about eating gentile cheese or milk do not include rationales, nor do they rely on context: they are final judgments applicable universally; they cannot be overturned. And yet he declares: "we permit in every instance where there is enmity, as we do today (*shrinan col heikha d'ika eivah k'gon*

<sup>246</sup> See *Chidushei HaRitbah*, *Avodah Zarah* 26a.

<sup>247</sup> *Beit Yosef Yoreh Deah* 158.1 The term is no longer *akum* but *goy*, according to the Bar Ilan CD.

<sup>248</sup> *Shulchan Arukh*, *Choshen Mishpat* 425.5

<sup>249</sup> *Chidushei HaRitbah*, *Avodah Zarah* 8b. *v'eima 'ad d'achil mamash*.

<sup>250</sup> *Chidushei HaRitbah*, *Avodah Zarah* 6b. *hahuh*. See also note on 8b #293 on page 30.

*bazman hazeh*).<sup>251</sup> This might lead us to think the Ritba would allow eating rabbinically forbidden foods were there *eivah*, but he does not.

The conflict here is of authority. The Ritba<sup>252</sup> offers us a suggested guideline to assess which of the following is more authoritative when in conflict: prohibitions originating from the Torah, prohibitions originating from rabbinic legislation, or preventing possible enmity. There is a hierarchy of authority in the traditional rabbinic mindset: *isurei d'oraita* carry greater urgency than do *isurei d'rabbanan*, and the rabbinic concern about enmity cannot overturn those issues previously and absolutely prohibited by rabbis. Giving priority to biblical prohibitions obtains when the environment, all things being equal, is normal. If, however, the environment is one in which enmity is a probability or even merely a possibility, then the initial hierarchy must be re-evaluated. We find examples in the above survey of *takkanot mipnei eivah* where the rabbis describe behaviors in such a way that they no longer constitute *isurei d'rabbanan* much less *isurei d'oraita*. For example, some rabbis deem it worthwhile for a Jewess to midwife a gentile on Shabbat for pay, even though the gentile child may grow up to be an idolater, thus rendering the Jewess an accessory to idolatry (usually considered a biblical prohibition), so as to prevent enmity from occurring now. That is, concern about immediate negative consequences for the Jewish community outweighs concern about possible trouble in the future from one individual.<sup>253</sup> It appears that, possibly against the Ritba's hierarchy, *eivah* can overturn some *isurei d'oraita* and some *isurei d'rabbanan*.<sup>254</sup>

<sup>251</sup> *Chidushei HaRitba. Avodah Zarah 26b. yicholah l'meimar leih.*

<sup>252</sup> I do not argue that this hierarchy applies in every case for the Ritba.

<sup>253</sup> See Rashi on *Avodah Zarah 26a*.

<sup>254</sup> To prove this conclusively would require analyzing how *mipnei eivah* is used vis a vis fellow Jews, a study beyond the scope of this paper.

*Mipnei eivah* appears as a powerful rationale justifying legislation overriding previous rules about Jewish-gentile relations. Certain behaviors previously prohibited are hereby permitted *mipnei eivah* – hostility now against the Jewish people, individually and collectively. Do not these rules based on *mipnei eivah* necessarily address themselves to particular historical circumstances and concerns? To what degree is it possible to consider legislation employing *mipnei eivah* legislation for Jews throughout history? Would such rules have universal application for eternity? Elon argues that, according to Maimonides and other legists, “the legislative activity of the scholars is operative only in the area of subordinate legislation, in which area they are authorized and enjoined to make enactments and decrees of a transient nature – ‘as a temporary measure’ (*le-fi sha'ah*; *hora'at sha'ah*, etc.) – but not to lay down immutable directives.”<sup>255</sup> Subordinate to Pentateuchal enactments, *takkanot* employing *mipnei eivah* are necessarily historically located and bound. These *takkanot*, reflecting contemporary concerns about the welfare of the Jewish community, simultaneously (a) “fill a lacuna in the law created in consequence of changed social and economic realities and the emergence of problems which find no answer in the existing *halakhah*; [and (b)] amend and vary the existing *halakhah* to the extent that this is dictated by the needs of the hour.”<sup>256</sup> A brief review of the *takkanot* surveyed in this chapter reveals their historical nature and their relationship with extant *halakhah*.

Economic *takkanot* employing *mipnei eivah* in regard to gentiles concern three issues: business generally, assisting gentiles when there is trouble in the means of production, and birthing. Timing of Jewish economic transaction with gentiles received a

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<sup>255</sup> Elon, "Takkanot," page 76.

<sup>256</sup> *Ibid.*, page 75.

great deal of attention over the centuries. Permission to transact or exchange monetary gifts before, during and after a pagan holiday was granted to the degree there was knowledge that the gentiles were not engaging in idolatry or if there was suspicion of enmity. The discussion about a Jew's responsibility to assist a gentile in economic difficulty (whose burden has fallen from an animal) offers a re-evaluation of obligations based on biblical and rabbinic legislation. The biblical principle *tza'ar ba'alei chayim*, for some legists, is a better rationale for legislating Israelites to assist gentiles than the rabbinic concept of *mipnei eivah*. And yet, a rabbinic principle (*mishum tza'ar Yisrael*) displaces the biblical principle as a rationale justifying such legislation (for Maimonides). *Eivah* is more authoritative than both these principles only in a limited case. Finally, in the realm of childbirth, the rabbis acknowledge that this activity usually entails desecrating Shabbat in some aspects. Though there is disagreement if these desecrations are based on biblical or rabbinic legislation, such desecrations are permitted because of concern about enmity. Furthermore, if religious arguments are not accepted by gentiles to absolve a Jewess from assisting (and thereby desecrating Shabbat), then, because of possible enmity, she may assist. Assisting for free, however, is prohibited.

At a descriptive level, these *takkanot* show intimate economic relations between Jews and gentiles. As Jews concern themselves with the timing and nature of gentile holidays, they also understand that their economic behaviors have social, political and certainly economic ramifications. Discussion about assisting gentiles suggests that there were many kinds of economic collaborative endeavors between Jews and gentiles. And Jewish medical sophistication was good enough to be known and to warrant gentile patients seeking Jewish help even on Shabbat.

At a legal level, we see that *eivah* outweighs other rationales in regard to general economic concerns and to birthing issues. Of central concern is avoiding being associated with aiding and abetting idolatry and idolaters. For joint ventures, however, self-referential and even self-preferential rationales supercede *eivah* to justify or prohibit assistance. Only in limited scenarios does concern about the other's view of Jews come to have significance.

In the sphere of religious interactions, we find *takkanot* addressing issues of childbirth, gentile holidays and celebrations, and the transaction of religious objects. Regarding childbirth, the rabbis differentiate the giving of services to gentiles and the receiving of services from gentiles. Though midwifing and nursing are prohibited because of a desire not to help bring another potential idolater into the world, they are permitted only in the case of enmity. Allowing a gentile to midwife a Jewess is prohibited, especially if unsupervised. We find that the prohibitions for Jewesses are based primarily on religious concerns while the permissions granted gentiles are based on sociological concerns. The only permissiveness afforded Jews is based on *eivah*. On the second issue, holidays and celebrations, the rabbis urge being sensitive to gentile practices so much so as not to declare Jewish celebrations or fasts on gentile holidays. Furthermore, a Jew is prohibited to attend a gentile's home celebration even though he had been invited, unless there is the possibility of enmity (but this is only hinted at). Still, a Jew ought to avoid a gentile's home long after the celebration has ended. About transacting religious objects, we find *takkanot* permitting the sale of Jewish religious objects to gentiles, certainly when there is concern about enmity; buying Jewish objects from gentiles seems to have been generally permitted.

These pieces of legislation describe changing attitudes about the reality of Jews interacting with people of other religious traditions. Concerns about health mix and mingle with concerns about relations among religions. Jews are to calculate carefully the timing and nature of Jewish celebrations so as not to arouse gentile anger. Jews have been and will continue to be invited or at least exposed to gentile celebrations. That religious objects abound in the market suggests that gentiles knew enough about Jews and Judaism to know which religious articles are valuable.

Legally, these *takkanot* hint at the intensity of the concern about *eivah*. This rabbinic concern, in some situations, can overturn not just other rabbinic prohibitions but even call into question biblical prohibitions. On the other hand, rules distancing Jews from gentiles, especially around gentiles' days of celebration, imply that *eivah* is not an all-powerful rationale. The multiple opinions over the centuries on these topics about the power *eivah* has as a rationale suggest that some legists would rather Jews adhere to *isurei d'oraita* and endure enmity. Might this be evidence of something akin to a martyrdom mentality? If this is too brash, then perhaps noting the fact suffices to show that *eivah*, while a concern, was not an all-consuming concern consistently for rabbis through the centuries.

In the realm of social relations we again find *takkanot* related to childbirth and also to offering assistance to gentiles otherwise stuck. According to medieval scholars, Jews may midwife gentiles and even leave Jewish infants with gentiles for nursing, but using gentile milk was forbidden. Should a Jew come across a gentile in need of assistance, if payment is offered a Jew should help because of *eivah*. Otherwise, a Jew could offer explanations as to why he can't stop to help.

Socially, we see Jews interacting with gentiles in times of need. Jews serving as midwives seems to be a continuous social fact throughout Jewish history (at least up to medieval times). Founded on an early Tannaitic attitude, we find greater permissiveness among medieval Ashkenazi communities than in Sepharad on this issue. But on the issue of encountering gentiles in need of assistance, the discussion jumps from the Talmud to medieval and pre-modern codes. This could reflect either agreement among rabbis about these issues, or that Jews rarely encountered gentiles in life-threatening situations.

From a legal perspective, we find legislation protecting a Jewess from jeopardizing her child even when there are permissive prior *takkanot*, and legislation encouraging Jews to offer explanations to excuse themselves from assisting a gentile in a dire situation. At least at this rather superficial level we see a trend toward social conservatism: Jews should minimize their interactions with gentiles. Where hostility might arise, however, permissions may be granted.

Throughout this chapter we see that the vast majority of *takkanot mipnei eivah* speak of positive obligations toward gentiles. These rulings urge Jews to engage in acts of commission. The logic is that were a Jew to commit an act of omission in a particular circumstance, it would spark animosity. Therefore, by using this phrase *mipnei eivah*, the rabbis legislate the commission of acts that would thereby prevent animosity and protect the Jewish individual and Jewish community. There are, however, a few *takkanot mipnei eivah* that speak of negative obligations: things Jews ought not do. For example, Jews ought not fast on Sunday, for fear of causing gentiles anger. Such legislation might be better called *gezerot*, as the term *gezerah* "denotes legislation prohibiting the

performance of a particular act that the Torah does not prohibit."<sup>257</sup> The distinctions between *gezerah* and *takkanah*, however, are not hard and fast, which allows us to call negative legislation with this rationale *takkanot*.

*Takkanot mipnei eivah* do indeed reflect real historical concerns. The consistency with which the rabbis returned to midwifery, for example, reveals the sociological reality that Jews and gentiles continuously assisted each other at childbirth, despite and maybe because of rabbinic legislation. Later generations sometimes overturn previous rulings, sometimes invoking *mipnei eivah*, and sometimes dropping it as a rationale. Sometimes the rulings express interest in the well-being of the Jewish community vis a vis gentiles, and sometimes these rulings pay more attention to Jewish integrity, or shall we say purity. As such, enactments employing *mipnei eivah* were made for both pragmatic political decisions as well as religio-ethical principles. Considering the *takkanot* surveyed here, we would have to say that the majority of uses of *mipnei eivah* were for political reasons, what Wurzburger would call "enlightened self-interest." Only a small portion of these rules relates to the religious integrity and purity of the Jewish individual and community.

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<sup>257</sup> Elon, *Jewish Law : History, Sources, Principles = Ha-Mishpat Ha-Ivri.*, Volume II:492.



## CHAPTER 4

### *Conclusion*

At first flush peace and enmity may appear as opposites. One describes harmony, the other strife. It might be logical that legislation made to prevent one would promote the other. Following this reasoning, *takkanot mipnei eivah*, legislation enacted to prevent enmity from arising, necessarily promotes *shalom*. Should one obtain, the other is absent. On the other hand, peace and enmity may appear appositional: different in essence and not necessarily mutually exclusive.

This concluding chapter examines the relationships between *takkanot* employing *mipnei darkhei shalom* and *mipnei eivah*. We begin by assessing in which ways these rationales are opposite or apposite. Then a discussion of what these *takkanot* do and reflect will lead into the concluding section about the relationships between ethics and *halakhah*.

#### **Opposite or Apposite?**

Were *mipnei darkhei shalom* opposite *mipnei eivah*, it would be plausible to say that when legislating against enmity one legislates in favor of peace. Further, one could

say that these rationales' function and meaning are similar if not the same. This logic is championed by Wurzbarger, especially when he states, "the Talmud uses the positive formulation *mipnei darkhei shalom* and the negative formulation *mipnei eivah* interchangeably."<sup>259</sup> He supports this argument with the following assertion:

As a matter of fact, many ordinances for which Tannaitic sources give no reasons but which resemble the kind of enactments that the Mishnah justified on the ground of *darkhei shalom* are explained in the Gemara as necessary for the prevention of *eivah*. Thus, there is no conceptual difference between the two formulations, which, for all practical purposes, are equivalent. It thus appears that what in earlier periods was termed *darkhei shalom* became, as a result of a later change in terminology, *mipnei eivah*.<sup>260</sup>

And elsewhere:

[W]hen the Amoraim explained the reasons for certain enactments previously decreed by the Tannaim, they have recourse to the term '*eivah*.' But since the Amoraim employ the term '*eivah*,' to explain Tannaitic enactments which are similar to those justified in the Mishnah explicitly by the reference to *Darkhei Shalom*, it follows that insofar as the Amoraim were concerned, 'the ways of peace' were the equivalent to the prevention of '*eivah*.'<sup>261</sup>

The "similarity" between the Amoraic *takkanot mipnei eivah* with the Tannaitic *takkanot mipnei darkhei shalom* justifies, in Wurzbarger's mind, equating these rationales. The

<sup>259</sup> Wurzbarger, *Ethics of Responsibility : Pluralistic Approaches to Covenantal Ethics*. page 49.

<sup>260</sup> Ibid. page 49.

<sup>261</sup> Wurzbarger, "Darkei Shalom," . page 82.

only significant difference between these rationales is their terminology, a difference he does not address.

We find support for this logic in R. Jehiel Jacob Weinberg's (1885-1966, Lithuania/Germany) *responsum* about burying Jews and gentiles. Should there not be a Jewish cemetery readily available to bury a dead Jew, then it is permitted to use a gentile cemetery, as long as there is no concern that gentiles will come to plow and plant in that cemetery. However, Weinberg asserts, we should consider prohibitions based on *mipnei eivah* and *mipnei darkhei shalom* (referring to BT *Gittin* 61a) about burying gentiles along with Israelites. Weinberg eventually permits burying a Jew in a gentile cemetery particularly during a time of war when there might not be time to locate a Jewish cemetery. And a head stone erected with Hebrew should be erected to make known that here lies a Jewish corpse.<sup>262</sup>

Weinberg, like Wurzburger, seemingly equates *takkanot mipnei eivah* with *takkanot mipnei darkhei shalom* – at least on this issue of burial. The survey of *takkanot* above, however, does not show equivalence on this issue. Only *takkanot mipnei darkhei shalom* address issues of burial. Though there is implicit in those *takkanot* that should a Jew not tend to the burial needs of gentiles acrimonious relationships might ensue. But the rabbis never legislated explicitly that out of a concern for enmity Jews should bury a fellow Jew in a gentile cemetery. Rendering equivalent *mipnei eivah* and *mipnei darkhei shalom*, while an attractive argument, does not accord with the *takkanot* pertaining to Jewish-gentile relations.<sup>263</sup>

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<sup>262</sup> *Responsa Shridei Eish*. 3:101.

<sup>263</sup> This does not preclude the possibility that *takkanot* employing these rationales and pertaining to relationships among Jews address similar, if not the same, issues and carry similar conclusions.

Another way to consider the relationship between these rationales is that, as opposites, they operate on different sides of a (moral and legal) coin. Novak avers that *shalom*, the "chief covenantal benefit," means more than a cessation of hostilities: *shalom* implies "a positive presence, not just an absence of harm." Positive peace, not a negative peace. He asserts that in the rabbinic tradition, peace is one of two principles governing "the way Jews are to treat non-Jews with whom they come into contact." Novak uses both the positive and negative formulations of the Golden Rule in his explanation:

The first principle is what is done 'to avoid enmity' (*mipnei eivah*). That is roughly the equivalent of 'what is hateful to you, do not do to someone else.' It is basic human decency. The second principle is what is to be done 'for the sake of the ways of peace (*mipnei darkhei shalom*). That is roughly the equivalent of 'love your neighbor as yourself.' So, that commandment [to love your neighbor] can now be taken to mean: Love your fellow Jews – and whoever happens to be among them – when they are both in need of your personal concern.<sup>264</sup>

According to this logic, *takkanot mipnei eivah* addresses 'basic human decency' by setting minimal standards. In contrast, *takkanot mipnei darkhei shalom* prompt ideal human decency, something Jews (if not all people) should strive to achieve.

We find evidence of this kind of thinking in R. Isaac Tyrnau's compilation of Austrian customs in the 14<sup>th</sup> and 15<sup>th</sup> Centuries. R. Isaac legislates that Jews ought not give Purim gifts to gentile maidservants (*sh'fachot nokhriot*), unless they are accustomed to receiving such gifts in which case Jews should continue to give them gifts *mipnei*

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There may be equivalence between these rationales in this case, but such equivalence would be in regard to relationships internal to the Jewish community.

<sup>264</sup> Novak, *Covenantal Rights : A Study in Jewish Political Theory*, pages 151-152.

*darkhei shalom*. Citing R. Eliezer ben Nathan of Mayence (1090-1170), R. Isaac says all Israel should behave this way and even give to gentiles (not working in a Jewish household). And since Jews are not strict about this particular prohibition, Jews should give to everyone, for if Jews don't give to a particular gentile, this may bring about *eivah*.<sup>265</sup>

R. Isaac's logic is that, because some gentiles (maidservants) are accustomed to receiving gifts when Jews celebrate Purim, at least these gentiles should continue to receive gifts for the sake of peace even though this is otherwise prohibited. No *takkanah* employing *mipnei darkhei shalom*, however, speaks of giving gifts to gentiles on Jewish holidays; rather, they only address receiving and giving gifts on gentile holidays. We thus see R. Isaac applying this rationale to a new case. Nevertheless, according to R. Isaac, gentiles who do not receive such gifts may become upset at this preferential treatment of certain gentiles by the Jewish community. To prevent potential animosity from part of the gentile community, the Jewish community should strive to give gifts to all gentiles, regardless if they are accustomed to this practice. Here we can see the logic that legislation preventing enmity urges at least basic human decency, and legislation promoting the ways of peace depicts ideal behavior.

The idea that *mipnei darkhei shalom* and *mipnei eivah* speak of opposite versions of the Golden Rule is more compelling than the idea that these rationales are equivalents. But do the *takkanot* employing these rationales truly manifest such an integral relationship in this manner? A quick review of the arenas of concern to which the rabbis applied these rationales reveals a complex relationship different than opposites as either Wurzburger or Novak purport. The chart below, while simplifying nuances, provides a

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<sup>265</sup> *Sefer HaMinhagim* (Tyrna). *Hagahot Minhagim Purim*. 6.

visual of the issues covered in the three arenas of relationships. The dashed line honors those issues blurring these rather basic arenas.

|                              | <b>Economic</b>                        | <b>Religious</b>   | <b>Social</b>                     |
|------------------------------|--|--|-----------------------------------|
| <i>Mipnei Darkhei Shalom</i> | Poor<br>Production<br>Taxation         |  | Speech<br>Sick<br>Dead & Mourning |
| <i>Mipnei Eivah</i>          | Timing<br>Production<br>Midwifery (\$) | Midwifery (\$)<br>Fasting<br>Feasting<br>Religious Objects | Midwifery (\$)<br>Assistance (\$) |

*Takkanot mipnei darkhei shalom* predominantly address arenas of economic and social relations. Specifically, we find them concerned with Jewish treatment of gentile poor, gentile means of production (tools), and tax collection; and with how Jews speak with gentiles, care for gentile sick, and attend to the dead and mourning. *Takkanot mipnei eivah*, on the other hand, predominantly address a broader range of arenas, including economic, religious and social relations. This rationale specifically applies to the timing of economic transactions on and around gentile holidays, attending to gentile means of production (an ox and its burden), and midwifery; in the religious arena, midwifery again receives attention as do making Jewish celebrations on gentile holidays, celebrating with gentiles on their holidays, and exchanging religious objects. According to my grouping of these *takkanot*, there are fewer rules pertaining to social relations, and of those that do, they address midwifery and offering assistance to gentiles in life-threatening situations.

Patterns are now readily apparent. Both rationales are applied to issues of health care and gentile means of production. Yet there are subtle differences. For example, *mipnei darkhei shalom* tends to be linked more with public health (the sick and dead) and

*mipnei eivah* with private health (midwifery). In regard to production, *mipnei darkhei shalom* is applied to legislation requiring Jews to protect gentile tools just as Jews would protect fellow Jews' tools from thievery. These *takkanot* do not explicitly express concern about protecting Israelite business interests, unlike *takkanot mipnei eivah*. These latter *takkanot* describe a variety of economic venture models and prescribe different Jewish action depending on the models. Overall, if there be vulnerability to Jewish business interests, then a Jew should intervene, based either on a rationale to protect a beast of burden from undue suffering or to protect an Israelite from undue economic suffering. Only in the case where a Jew has no explicit economic interest does *eivah* come to justify legislating intervention on behalf of the gentile.

We also see patterns within each arena. Within the economic arena, *mipnei darkhei shalom* appears linked with public finances, both the generation of it for public coffers, as well as the distribution of resources for the poorest of society. *Eivah*, however, is associated with the business cycle generally and with private economic concerns.

There are, according to my analysis, no *takkanot mipnei darkhei shalom* addressing religious concerns. *Mipnei eivah*, however, is applied to the making of Jewish holy days, respecting gentile holy days and celebrations, and transacting religious objects. Certainly this makes practical sense. The rabbis would be reluctant to create enactments altering Jewish religious practices for the sake of the ways of peace, for are not (in their mindset) extant religious practices designated or at least approved of by God? Though religious practices might not explicitly promote "the ways of peace," surely they do not detract from them. The rationale of preventing enmity hereby affords the rabbis a way to

curb certain Jewish tendencies, like co-opting gentile holidays, giving gentiles something more to celebrate on their holidays, and selling Jewish religious paraphernalia to just anybody for no good reason.<sup>266</sup>

Within the sphere of social relations, *mipnei darkhei shalom* serves to justify curbing Jewish verbal communication with gentiles especially on their holidays, and yet justifies enjoining Jews to care for gentile sick as well as attend to gentile dead and mourning. Put differently, this rationale urges Jews to extend assistance to gentiles when they are most vulnerable, and yet hold back from interacting with gentiles when they are celebrants. A similar push/pull tension is found among social *takkanot mipnei eivah*. We find the rabbis urging Jews to be more or less indifferent to gentiles in sticky situations unless enmity (by rejecting payment for assistance) becomes a paramount concern. Perhaps we could say that, in the social arena at least, *takkanot* using these rationales urge Jews to engage with gentiles only when the gentiles are most needy if not desperate.

The only issue that I placed in all three arenas is midwifery, and this is found only among *takkanot mipnei eivah*. The rabbis express concern in multiple dimensions about how Jewesses service gentile women and how Jewesses receive gentile birthing and nursing assistance. Common throughout the *takkanot* on this topic is permission granted a Jewess to midwife a gentile should the gentile offer payment for the Jewess' services. This, however, is a last resort. Preferred is that a Jewess avoid involving herself with the birth of a gentile child. We also find a similar sentiment among the enactments about offering assistance to gentiles in sticky situations. Were a gentile to offer payment the

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<sup>266</sup> That no *takkanah* speaks explicitly of ritual or liturgical change is not surprising, as few gentiles had exposure to or potentially grave concerns about such practices internal to the Jewish community. The rabbis needn't legislate changes in religious practices because of how some practices do or might impact gentiles.



rejection of which would cause enmity, only then should a Jew extend a helping hand. Payment, as expressed in the chart with the (\$), radically alters the circumstances. Should a Jew reject payment for his or her services enmity might incur not just from the rebuffed gentile but from the broader gentile community as well. It would be better, in rabbinic logic, for a Jew to transgress a particular prohibition and assist this particular gentile than risk endangering the broader Jewish community. Securing payment, however, is not so much for the Jew's remuneration as it is a way to ensure that the gentile would not think that the Jew is assisting for free.

Obviously *takkanot mipnei darkhei shalom* and *takkanot mipnei eivah* do not address exactly the same issues nor related issues in the same way. Given our data, we would be hard pressed to say that *mipnei eivah* and *mipnei darkhei shalom* are equivalent opposites, qua Wurzburger. Similarly difficult to conclude would be the assertion that these rationales serve on completely opposite sides of the Golden Rule coin: one negative, the other positive, qua Novak. There is evidence, however, of tendencies which invite us to revisit Novak's theory (see below). *Mipnei darkhei shalom*, pragmatic as ever, tends to be associated with issues of the common good: economic justice and public health. Put differently, these *takkanot* address basic human needs. *Mipnei eivah* tends to be allied with issues of private good: personal economic protection, birthing, private celebrations, individuals in sticky situations, personal religious objects. These *takkanot* describe what would be preferred in particular instances. Might this then suggest that *mipnei eivah* and *mipnei darkhei shalom* do not function as opposites but as appositional complements? For all intents and purposes, it appears they address complementary issues. We now turn to the question of function: what do these *takkanot* do?

## Prescription and Description

Though the rationales are employed to a whole host of issues through the centuries, patterns of their function emerge. Patterns such as their relationship with the concept of virtue, their tension with previous legislation, and their depiction of a future society – all deserve attention here.

Both *mipnei darkhei shalom* and *mipnei eivah* express concern about the quality of relationship between Jews and gentiles. While at one level they enjoin and prohibit particular behaviors that will enhance the relationship's quality, these *takkanot* also speak of issues more internal to the individual. As we discussed, some legists consider *mipnei darkhei shalom* a rationale for agent-morality, which is a "precept mandating the cultivation of moral disposition patterning itself after the divine model."<sup>267</sup> If, as Wurzburger asserts, the divine moral disposition is altruism, then we can comfortably conclude that *mipnei darkhei shalom*, at one level, instills the virtue of altruism in each individual who follows these *takkanot*. And should we continue with Wurzburger's assumption that *mipnei eivah* and *mipnei darkhei shalom* are moral equivalents, then would not *mipnei eivah* similarly cultivate altruism? This conclusion, however, is more difficult to sustain given the data above. For example, actually assisting a gentile in a pit only after being offered money and threatened with hostility does not seem, to me at least, as behavior motivated by or cultivating altruism.

Nevertheless, an argument can be made that these rationales do instill virtues. Broadly speaking, *mipnei darkhei shalom*, to the degree it allies itself with the general good, compels Jews to take into consideration others' well-being, specifically gentiles'.

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<sup>267</sup> Wurzburger, "Darkei Shalom," page 84.

This rationale expands a Jew's sphere of concern. I avoid using the term altruism here because it is unclear that *mipnei darkhei shalom* expresses concern for the other more than concern about the other. The difference is subtle but important. Concern for the other would be closer akin to altruism, if one defines altruism as "dispositions and actions which have the welfare of others for their motive and object" only.<sup>268</sup> But as we saw, employment of *mipnei darkhei shalom* was not motivated out of concern for gentile well-being exclusively. Instead, as Rosenn concludes in her study of this rationale as it is applied to both Jews and gentiles, *mipnei darkhei shalom* is a strategic maneuver enacted to avoid enmity.<sup>269</sup> While this strategic maneuver certainly includes taking into consideration others, it is done ultimately out of concern for the self's well-being. We are thus better off saying that *mipnei darkhei shalom* expands Jewish consideration by incorporating concern about others:

How does this concern about others differ from the concern expressed by *mipnei eivah*? This rationale encourages Jews to consider gentiles in many ways. One is directed toward individual gentiles, as in the cases of midwifery, assisting gentiles in business difficulties and in sticky situations. *Takkanot mipnei eivah* instruct Jews to consider particular gentiles in need and extend a helping hand to those individuals, but only in specific and probably rare circumstances. In so doing, Jews prevent enmity from occurring. Note, too, that of *mipnei eivah* legislation these enactments are the ones requiring extraction of payment. Concern here is to prevent particular gentiles becoming angered by Jewish acts of omission even when offered money. Should these specific gentiles become angry, they may spark general animosity among other gentiles toward

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<sup>268</sup> James Hastings, John A. Selbie, and Louis H. Gray, *Encyclopedia of Religion and Ethics* (New York: C. Scribner's Sons, 1911), Volume I:355.

<sup>269</sup> Rosenn, "Mipnei Darkei Shalom in Rabbinic Tradition".

the Jewish individual who opted not to assist or toward the Jewish community generally. We could argue, then, that employing *mipnei eivah* in these cases is also a strategic maneuver whose central if not only concern is the welfare of Jews. On the other hand, these *takkanot mipnei eivah* deal with individual Jews encountering specific gentiles in particular circumstances. Consideration of the other in these cases is not about that individual gentile's welfare per se, but rather about protecting the welfare of the individual Jew in the immediate situation.

In contrast, many other *takkanot mipnei eivah* express concern for the general Jewish community. Though these enactments speak of not upsetting gentiles generally, their primary concern appears to be protecting the Jewish community. For example, legislation enjoining Jews to transact with gentiles around and even on their holidays reflects a concern for the Jewish community's economic sustainability more than a concern about gentile anger. Similarly, not making a Jewish celebration (even of fasting) on a gentile holiday is preferred so as to prevent animosity toward Jews generally. Obviously these rules are not based on respecting the gentile holiday in and of itself. Taking *eivah* into consideration thus instills a sensibility of concern for the Jewish community more than a concern about (and certainly not for) gentiles.

We now can see that both rationales cultivate concern. *Mipnei darkhei shalom* compels concern about others. *Mipnei eivah* nurtures concern for the Jewish individual and Jewish community. Though their targets are distinct, they both reflect a rabbinic desire that Jews expand their spheres of concern. One directs itself outward, the other inward. Directions, though, are not end-points. Rather, by being concerned about others, one takes care of oneself. Conversely, by taking care of oneself, one also cares for the

other.<sup>270</sup> This is distilled in the maxim: "If I am not for myself, who will be for me? And if I am for myself only, what am I? And if not now, when?"<sup>271</sup>

Rabbinic employment of *mipnei darkhei shalom* and *mipnei eivah* urges the cultivation of particular virtues, and also reflects a recognition that human behavior falls shy of morality. The rabbis felt it necessary to create these *takkanot* and deploy these rationales because they observed Jewish behavior as (a) lacking in morality as compared with Toraitic designs, (b) lacking in morality as compared with rabbinic designs, (c) possibly endangering Jews and Judaism. But from where did the gap emerge? Perhaps the rabbis "knew well enough that human behavior falls short of true morality if it is motivated solely by fear of heavenly punishment or the hope of divine reward."<sup>272</sup> Maybe Jews were sticking too close to *halakhah* without taking into consideration the real impact their behavior has on others and on themselves. Maybe civilization had changed so much that *halakhah* was not meeting contemporary needs and concerns.

The rabbis embarked on closing the gaps by re-evaluating previous pieces of legislation. Where the bible did not explicitly instruct Jewish concern about gentiles, the rabbis made positive injunctions and rationalized them as promoters of social welfare. Also, where previous rabbinic legislation held back even basic decency toward gentiles, the rabbis instructed Jews to provide such services so as to protect Jews from hostility. We see, though, greater trepidation among those employing *mipnei eivah* when seeking to overturn previous legislation. Later generations yearned to respect previous

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<sup>270</sup> Louis Jacobs, "Greater Love Hath No Man...The Jewish Point of View of Self-Sacrifice," *Judaism* 6, no. 1 (1957); Chaim W. Reines, "The Self and the Other in Rabbinic Ethics," *Judaism* 2, no. 2 (1953).

<sup>271</sup> Mishnah *Avot*. 1:14.

<sup>272</sup> Emil Fackenheim, "The Revealed Morality of Judaism and Modern Thought," in *Contemporary Jewish Ethics*, ed. Menachem Marc Kellner (New York: Sanhedrin Press, 1978), page 65. He is referring to Mishnah *Avot* 1.3.

prohibitive legislation. Unterman, a former Chief Rabbi of Israel, speaks bluntly of these differences, glossing over some nuances:

In conclusion: laws "for the ways of peace" flow from the ethical source of the holy Torah that states "all its ways are ways of pleasantness and all its paths are peace." These [laws] were fixed by our earliest sages according to their great knowledge, and this obliges all of us. They have the authority to decide in matters of interpreting *halakhah* and permitting things rabbinically prohibited (*d'rabbanan*). Also, in regard to Toraitic prohibitions (*d'oraita*), we find that they permit several things *mishum eivah*. However, on those matters referring to Toraitic Shabbat prohibitions, they permit on the basis of *mishum eivah* only in the cases where there is danger to life.<sup>273</sup>

Unterman, like the Ritba, recognizes a hierarchy of authority. Rabbis could overturn previous *d'rabbanan* prohibitions, and could overturn *d'oraita* prohibitions only if there were *eivah*. But *eivah* in its broadest sense was not justification to overturn *d'oraita* prohibitions pertaining to Shabbat; only extreme situations of danger to life would justify overturning these *isurei d'oraita*. Furthermore, employing these rationales suggests that the rabbis did not condone these behaviors in the first place: they had to legislate using rationales – a style of legislation rarely found in a normative legal tradition. They could not justify making these rules without basing them on pleas to expand Jewish consideration.

Changed and changing historical circumstances necessitated adjusting *halakhah* especially vis a vis gentiles. Were these new enactments expressions of lenience or

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<sup>273</sup> R. Y. Unterman, "Darkhei Shalom Vehagdaratam," *Or HaMizrach* 15, no. 4 (1966), page 231. Translation mine.

strictness? Zemer maintains that "the Sages invoked many...rationales for ruling leniently with regard to rabbinic and even toraitic prohibitions out of consideration for the needs of other people. Halakhah was not isolated from the lives of the community of Israel." To *mipnei darkhei shalom* and *mipnei eivah* he adds *bim'kom tza'ara / p'sida* (where there would be suffering / loss)<sup>274</sup>. He concludes: "these three principles involve the loosening of rabbinic prohibition."<sup>275</sup> Given the data surveyed here, however, it appears that at least with *mipnei darkhei shalom* and *mipnei eivah*, the rabbis are not so much loosening rabbinic prohibitions as they are adding onto the plethora of behaviors Jews should enact vis a vis gentiles. These *takkanot* can be considered stringencies. They narrow the range of possible behaviors by declaring which are preferred and required behaviors.

To what degree do these additional obligations spur Jews to behave beyond *halakhah*? That is, how are these enactments different from those based on *lifnim meshurat hadin* – legislation prompting supererogatory behavior? Like *lifnim meshurat hadin*, our rationales ask Jews to voluntarily transcend previous legal obligations in particular circumstances.<sup>276</sup> Only a few of the *takkanot* surveyed here speak of commandment (*mitzvah*); the vast majority speak in terms of permission and prohibition. In contrast to *takkanot lifnim meshurat hadin* our *takkanot* speak more of legal duties than of legal rights. And unlike *lifnim meshurat hadin*, which "sanctions certain actions that the law does not require but never sanctions actions that the law does not permit,"

<sup>274</sup> See BT *Ketubot* 60a. Where there would be suffering, the rabbis would not decree (*lo gazru*)...where there would be loss (or disadvantage), the rabbis would not decree. These rationales, however, are found only once in the Talmud, a few times in Rishonim literature, a handful in Karo's works, and less than 50 times (for each) in responsa literature.

<sup>275</sup> Moshe Zemer, *Evolving Halakhah: A Progressive Approach to Traditional Jewish Law* (Woodstock, Vt.: Jewish Lights Pub., 1999). pages 15-16.

<sup>276</sup> Louis E. Newman, *Past Imperatives: Studies in the History and Theory of Jewish Ethics*, *Suny Series in Jewish Philosophy* (Albany, N.Y.: State University of New York Press, 1998). page 29.

our rationales do sanction previously prohibited behaviors.<sup>277</sup> The extensive legislation about midwifery shows this pattern.

Yet neither our *takkanot* nor supererogatory legislation puts an upper limit on these actions. In fact, these enactments are necessarily ones that Jews can manifest. The Babylonian Talmud states, "no legislation is to be imposed on the community should the majority is able to maintain it."<sup>278</sup> A parallel sentiment is found in the Jerusalem Talmud: "any decree imposed by a court but is not taken up by the majority of the population is not a decree."<sup>279</sup> Maimonides integrates these two principles:

A court which sees fit to institute a decree or enact a *takkanah* or introduce a practice must consider the matter and know beforehand whether or not the public is able to abide thereby...If the court has instituted a decree believing the majority of the public is able to abide thereby, and thereafter it is found to be scorned by the people and not followed by a majority of the public – it will be void, and it will not be permissible to compel the people its observance.<sup>280</sup>

We assume, then, that *takkanot mipnei darkhei shalom* and *mipnei eivah* were instituted because the rabbis felt the majority of the Jewish public could and would observe them.

Not only can we conclude that the majority of Jews could and would perform these obligations, we can also say Jews should perform them. Speaking in terms of "ought" moves us away from a descriptive analysis of these rationales' content and legal function and toward an exploration of what the rabbis sought to create: what were the

<sup>277</sup> Ibid. page 30.

<sup>278</sup> BT Avodah Zarah 36a. *ein gozrin gezerah 'al hatzibur ela im kein rov tzibur yikholin la'almod bah.*

<sup>279</sup> JT Avodah Zarah 2:9 / 41d. *sh'kol gezerah sh'beit din gozrin v'ein rov tzibur mekablin 'aleihen einah gezerah.*

<sup>280</sup> Mishneh Torah. *Mamrim*. 2:5-6. Translation found in Elon, "Takkanot," page 81.



ideal societies they yearned for when they employed these value-laden rationales? Saying that something promotes social harmony or prevents hostility necessarily ascribes value to that thing, especially so when that statement is ensconced in law. For example, asserting that attending to the needs of the poorest of society is law is one thing. Saying that attending to the needs of the poorest of society because it promotes the ways of peace is another. Certainly every legal system seeks to preserve the societies to which they apply; anything otherwise would be self-destructive and illogical.<sup>281</sup> Laws containing within them rationales, such as the promotion of social harmony, serve a special function within a legal system: they paint a picture of what a society could and should look like. That is, a society already in harmony would not need laws justified by rationales explicitly stating "this law promotes social harmony." Like the quip "the most successful peace activist is unemployed," it is logical that rules promoting social harmony or preventing animosity yearn to shed themselves of their rationales. This aside, the rules employing these rationales depict a Jewish community interacting with gentiles in such ways that Jews automatically take into consideration the general good as well as personal preservation.<sup>282</sup>

### **Ethics and *Halakhah***

Another vision of society is found in Novak's theory relating our rationales to the Golden Rule. He associates *mipnei eivah* with the negative version of the Golden Rule, as articulated by Hillel's summary of the Jewish tradition: "what is hateful to you do not

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<sup>281</sup> See Norbert Samuelson, "Revealed Morality and Modern Thought," in *Contemporary Jewish Ethics*, ed. Menachem Marc Kellner (New York: Sanhedrin Press, 1978).

<sup>282</sup> Had this paper explored the employment of these rationales in regard to relations internal to the Jewish community as well, we could see a more expansive and detailed picture of what the rabbis understood as a more peaceful and less hostile society.

do to someone else.”<sup>283</sup> Conversely, Novak connects *mipnei darkhei shalom* to the positive rendition found in the Torah: “love your neighbor as yourself.”<sup>284</sup> Using these correlations, Novak concludes “that there is no overt exclusion from intercovenantal love of any outsider, and at the same time no overt inclusion of any outsider either. Thus the former precludes xenophobia, and the latter precludes imperialism.”<sup>285</sup>

This is an attractive vision of society. It simultaneously honors a sense of universalism without undermining particularity. A balance is established, as evidenced and legislated by *takkanot mipnei darkhei shalom* and *takkanaot mipnei eivah*. The latter demarcate, for Novak, “basic human decency,” implying that the former inculcate ideal behavior. Unfortunately, he bases this vision on only a few Talmudic citations regarding healing, burial and taxation.

The survey above affords us a more complete picture of how these *takkanot* aspire to create a more amicable society in doing what is right and good. The biblical injunction to do the right and the good (*hayashar vehatov*)<sup>286</sup> encourages us to distinguish among them. Dorff offers a cogent distillation of their differences:

Judgments of ‘the right,’ it seems to me, are assertions of what must be done to advance *the basic needs of a society as that society envisions them....* ‘The good,’ in contrast, is a declaration of *the less basic needs or the ideals of a society*.<sup>287</sup>

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<sup>283</sup> BT *Shabbat* 31a.

<sup>284</sup> Leviticus 19:18. There is much commentary on this verse: does it mean one should love others...as one would want to be loved, as one loves oneself, as long as and in as much as others are like oneself? We leave such variations for other conversations: the text itself suffices for our argument.

<sup>285</sup> Novak, *Covenantal Rights : A Study in Jewish Political Theory*, page 152.

<sup>286</sup> Deuteronomy 6:18.

<sup>287</sup> Elliot N. Dorff, *To Do the Right and the Good : A Jewish Approach to Modern Social Ethics*, 1st ed. (Philadelphia: Jewish Publication Society, 2002), page 249. His italics.

The right, he continues, "must be defined in terms of the needs of human survival *as a particular society sees them*."<sup>288</sup> Furthermore, these basic needs (physical as well as spiritual) are seen as fundamental needs – the "*basic requirements* of existence; the 'seeing' makes the content of the terms relative to the particular society, and the 'basic requirements' gives the terms their authority and objectivity."<sup>289</sup> At the level of right and wrong, we deal with a society's existence. This is the level of rule morality, in which rules are catalogued as required, optional or forbidden. What a society establishes as rights express what that society sees as its minimal and fundamental needs for survival.

And of the good? Dorff surmises, "according to the depth and scope of [human] relationships, the people in them expect to do for each other well beyond what a rule morality could reasonably require of them."<sup>290</sup> The good are expressions of ideals as a particular relationship or society sees them, and they have positive repercussions: "the good thing is that which will produce future desirable consequences."<sup>291</sup> Though desirable, they are less essential to societal survival than are rights. As such, the urgency of rights compels action more than the aspirations of the good.<sup>292</sup>

Let us return to our chart of *takkanot*. Even though the chart generalizes the topics covered, it nonetheless paints a picture in terms of good and right.

<sup>288</sup> Ibid. page 253. His italics.

<sup>289</sup> Ibid. pages 254-255. His italics.

<sup>290</sup> Ibid. page 257.

<sup>291</sup> Ibid. page 243.

<sup>292</sup> "Judgments of right versus wrong are expressed in the imperative mood, or, at least, have an imperative tone to them, while pronouncements of what is morally good or bad are articulated in, and have the tone of, the indicative mood." "Judgments of the right are closer to action than assertions of the good." Ibid. pages 248 & 260.

|                              | Economic                               | Religious  | Social                            |
|------------------------------|--|--|-----------------------------------|
| <i>Mipnei Darkhei Shalom</i> | Poor<br>Production<br>Taxation         |  | Speech<br>Sick<br>Dead & Mourning |
| <i>Mipnei Eivah</i>          | Timing<br>Production<br>Midwifery (\$) | Midwifery (\$)<br>Fasting<br>Feasting<br>Religious Objects | Midwifery (\$)<br>Assistance (\$) |

As "the right" are those things a society deems as fundamental for its basic survival, we could argue that those things are called (and please excuse the confusion of the parlance) "the common good." We find that *takkanot mipnei darkhei shalom* predominantly address issues of the common good (public health, economic justice). Though this correlation is not absolute across the board, we can argue that *mipnei darkhei shalom* is applied to issues where basic human needs are to be met.

In contrast, with the obvious exception of the issue of the timing of business, we find that *takkanot mipnei eivah* are concerned predominantly with what would be ideal for particular people in particular circumstances. That is, these *takkanot* are less concerned about general basic needs being met than about what would be desirable in a specific relationship or encounter. We find among these *takkanot* that should basic needs be unmet, they are invariably a gentile's not a Jew's. Many *takkanot* suggest alternative ways for those needs to be met without involving a Jew directly. But, in the end, should those alternatives prove too costly for everyone, including the broader Jewish community, a Jew is obliged to attend to the interests of the gentile because of *eivah*. In this way, *takkanot mipnei eivah* depict moral goods.<sup>293</sup>

<sup>293</sup> "A goal becomes a moral good (rather than simply a good for me) when it is, at least partially, other-directed....Moral goods involve the welfare of others. I too might benefit, but if the good is moral, I alone cannot benefit.." Ibid, page 243.

We now turn to the question of priority. Following Novak's correlation of *mipnei eivah* with "what is hateful to you do not do unto someone else" and *mipnei darkhei shalom* with "love your neighbor as yourself," we could say that the former describes potential acts of omission and the latter potential acts of commission. Both help construct a more amicable society, but we are left wondering which takes priority. When considering these *takkanot* in terms of right and good, those concerned with basic needs command us with greater urgency. Meeting basic needs is a moral duty. Meeting basic needs of those closer to yourself should be done before meeting basic needs of someone further afield.<sup>294</sup> Fulfilling duties to meet basic needs takes precedence over doing acts of moral goodness.<sup>295</sup>

Our priority is first to attend to the basic needs of society and then, once those are met, perform what would be ideal for a particular relationship. Is this truly either/or? Rarely are we confronted with the dilemma of choosing between these responsibilities. In the event that we should, though, Jews are first to meet basic needs where we can, as others most likely will be able to provide the goods so desired for a particular gentile in need.

The impulse to prioritize the community over the individual has roots in early rabbinic Judaism yet took hold as a guiding principle for *halakhah* particularly during the medieval period.<sup>296</sup> We find *takkanot mipnei darkhei shalom* and *takkanot mipnei eivah* consonant with Gordis' theory that the development of *halakhah* emerges from external factors ("the necessity to respond to new external conditions – social, economic, political,

<sup>294</sup> MT. *Mattenot Aniyim* 10:7-14.

<sup>295</sup> Dorff, *To Do the Right and the Good : A Jewish Approach to Modern Social Ethics*. page 244.

<sup>296</sup> Robert Gordis, "A Dynamic Halakhah: Principles and Procedures in Jewish Law," *Judaism* 28, no. 3 (1979). page 265.

or cultural") and internal factors ("recognition of new ethical insights and attitudes").<sup>297</sup> Responding to internal and external changes inspires the Jewish ethical drive to do the right and the good. Our task is to prioritize the right; this should not come, however, at the expense of the good. Just as "Judaism strives...to embody moral norms in legal form," so should we continue to develop *halakhah* using *takkanot mipnei darkhei shalom* and *takkanot mipnei eivah* to create an ever more amicable society.

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<sup>297</sup> Ibid. page 267. See also Schiff's study of *mipnei darkhei shalom*, *mipnei no'am*, and *mipnei tikkun ha'olam* where he concluded that, though not uniform in their function or meaning, "they regularly inspired structural ethical considerations, which were often the cause of profound challenges to received laws. At the same time, however, we must acknowledge that there were numbers of instances in which our apparently 'ethical norms' were actually utilized to substantiate practical aims. Yet it must nevertheless be asserted that the fact that these norms were deployed in situations that were unrelated to the ethical does not necessarily detract from their future ability to evoke and support the ethical, if called upon to do so. If *halakhic* adjustment is determined to be a priority amongst those who view *halakhah* as the *more derech* (guide) for their lives, then no technical impediment would seem to obstruct the renewed application of these principles in again acting for the ethical." Schiff, "Principles of Power: The Application of Ethical Norms within the Halacha". Page 90.

## APPENDIX A

### *Encyclopedia Talmudit*

#### *Mipnei Darkhei Shalom: b'yachas l'goyim*

- 101) Inquire about the welfare of gentiles (*goyyim*) for the sake of peace. (M. Gittin 61a; Rambam A.Z. 10:5)
- 102) Even if it attaches to them the name of heaven, for "shalom" is the name of God (Rashi at Gittin 61a; see also "mentioning God's name" on pages 187 & 200)
- 103) In regard to inquiring about welfare on their festival days, see also "the festivals of idolaters (*akum*): inquiring about welfare." In regard to "doubling peace" [returning a greeting with Shalom, Shalom] see gentiles (*goy*) (see page 258).
- 104) Do not prevent gentile (*goyyim*) poor from gathering gleanings, forgotten sheaves and field corners, for the sake of peace (M. Gittin 59b; Rambam AZ 10:5, Mattenot Aniyim 1:9; Tur Shulchan Arukh Y.D. 151:13)
- 105) We also provide them sustenance and clothing (Rambam Mattenot Aniyim 7:7)
- 106) The gentile (*akum*) poor with Israelite poor for the sake of peace (Tosefta Gittin 3; baraita in BT Gittin 61a; Rabmam A.Z. 10:5; Rambam Mattenot Aniyim 7:7, Rambam Melachim 10:12; Tur Shulchan Arukh 151:12; Tur and Rema in Shulchan Arukh Yoreh Deah 251:1)

- 107) We visit gentile (*akum*) sick with Israelite sick for the sake of peace (Baraita in Gittin 61a; Rambam Evel 14:12, Melachim 10:12 with deletion of "with Israelite sick", and see above; Tur Shulchan Arukh Y.D. 151:12, 335:9)
- 108) And bury gentile (*akum*) dead with Israelite dead for the sake of peace (Tosefta and *baraita* in the *gemara* BT Gittin 61a; Rambam Evel 14:12, Melachim 10:12; Tur Shulchan Arukh Y.D. 151:12, 367:1)
- 109) But do not bury [gentile dead] among Israelite graves (Rashi Gittin 61a; Ran on the Rif on Gittin 61a)
- 110) And we eulogize over [gentile dead] (Tosefta Gittin 61a; Tur Shulchan Arukh 151:12)
- 111) And we comfort their mourners (Tosefta Gittin 61a; Rambam Evel 14:12; Tur Shulchan Arukh 151:12, 367:1)
- 112) The Rishonim wrote about all these [obligations], for behold it is said: "God is good to all, and His compassion is upon all his works" (Psalms 145:9)
- 113) And it is said: "its ways are ways of pleasantness, and all its paths are peace" (Proverbs 3:17; Rambam Melachim 10:12)
- 114) And the Rishonim wrote that all these things said in regard to their sustenance and burial of their dead and visiting their sick, [these should be done] not only when they are encountered together with Israelite poor, Israelite sick, and Israelite dead, but even when the are [encountered] alone (Rashba, Ran, Ritba Gittin 61a; Yerushalmi Gittin 5:9; Bach Yored De'ah 151, according to the words of the Smag, and the Tur Yoreh Deah 151:12; Taz Yoreh Deah 100:9; Shakh 100:19)



- 115) And "with Israel" is that [the sages] said, is used in the sense of "just as", i.e., just as we bury Israelite dead, so shall we do for everyone (Rashba, Ritba Gittin 61a)
- 116) Or when they said "with Israelite poor" it is for the exceptional meaning it has: that even if there were also Israelite poor, should it be the case that because of supporting the gentile (*goy*) poor we may deprive Israelite poor [of some sustenance], we shall sustain them nevertheless (Prisha Tur Choshen Mishpat 249:2; Hagahot Mordecai Gittin 464, according to Rashi Gittin 61a; Radbaz Mattenot Aniyim 1:9, according to Rambam Mattenot Aniyim 1:9 that "only when they are encountered with Israelite poor"; Bach 151 according to Rambam distinguishes between other things, which apply when [gentiles] are even by themselves, and sustenance; Shik to Yerushalmi Gittin 5.9, that the Rambam brings A.Z. "God is good to all" (Melachim 10:12); see above, this is proof that they do all these things even when they are alone.)
- 117) We already behave this way to sustain poor gentiles (*akum*) even if there are not Israelite poor (Bach, Prisha, Taz, Shakh Choshen Mishpat 249.2; Beur Hagra 151:20 & 251:2)
- 118) We gather in gentile (*akum*) tools because of [fear of] thieving, like Israelite tools [one collects them to protect them] for the sake of peace (Yerushalmi Gittin 5:9; which is before us as "washing" (*m'chavsim*), and this is the received reason, but the sages have "entering" (*machnisim*), like the Yerushalmi A.Z. 1.2; Shik Gittin 5.9; Rambam G'zeila 11:3; Tur Shulchan Arukh Choshen Mishpat 266.1; and see above page 359.)

- 119) In a city that has within it gentiles (*akum*) and Israelites, the city leaders collect from Israel and gentiles (*akum*) for the sake of peace (Tosefta Gittin 61a; Yerushalmi Gittin 5.9; and this means to teach that even though it is prohibited to receive tzeddakah from gentiles (*goy*) in public; see Sanhedrin 26b; see B'Orchah Responsa Da'at Cohen L'Hagra'i Kook 132)
- 120) We support the efforts of gentiles (*goy*) in a sabbatical year, for the sake of peace (Mishnah Shviyit 4:3, 5:9; Mishnah Gittin 61a; Rambam Shmita v'yovel 8:8)
- 121) We do not support them by hand (*biyad*), rather by words alone. For example, if one sees him plowing, say to him "be strengthened or succeed" and similar such words (Rambam Shmita v'yovel 8:8; Gemara Gittin 62a; Yerushalmi Gittin 5.9; Tosefta beginning with "*asharta*")

Regarding decrees of the sages enacted preventing enmity between Israel and gentiles (*nokhri*), see "enmity: between Israel and gentile (*nokhri*). About decrees they declared "because of the peace of the kingdom", see "political peace" (*shalom malchut*).

## APPENDIX B

### *Encyclopedia Talmudit*

#### *Mipnei Eivah: bein Yisrael l'Nokhri*

- 46a) The sages permitted several rabbinic prohibitions out of concern for enmity between Israel and Gentiles (*nochrin*). [For example, if] a Gentile (*nokhri*) sends a gift to an Israelite on the day of their festival, we should not accept the gift. But if there is suspicion of possible enmity [should we not accept it], one should accept it. (Tur Shulchan Arukh, Yoreh Deah, 145.5; BT Avodah Zarah 6b; See in particular "festivals of idolators" (*eidehin shel 'akum*)).
- 47) Three days before their festivals it is prohibited to engage in commerce with [Gentiles] (see this article elsewhere on "commerce" (*masa umatan*)).
- 48) Behold this applies only within the land of Israel, but outside in the diaspora the prohibition applies solely on the day of their festival itself (R. Samuel's opinion on BT Avodah Zarah 7b)
- 49) and in this time [transaction] is permitted even on the day of their festival (Tur Shulchan Arukh, 145.12, according to the Rishonim),
- 50) and one of the reasons is because of enmity (*mishum eivah*) (see article below on "at this time" (*b'zman hazeh*)).

- 51) It is forbidden for an Israelite woman to serve as midwife for a Gentile woman (*nokhrit*) because she may give birth to a son who will engage in idolatry, but if she is paid, she is permitted – because of possible enmity [should she refuse even remuneration for her services] (BT *Avodah Zarah* 26a; Rambam A.Z. 9:16)
- 51a) But if it is known that the Gentile (*nokhri*) will not accept rationales to escape [helping], [the Israelite] is permitted [to help the Gentile give birth] regardless if it is for free or for pay, in every instance where there will be suspicion of enmity (Ritba A.Z. 26.a; but see Ritba A.Z. 26a “that the prohibition applies even in a case of rabbinic Shabbat prohibitions).
- 52) In every place the prohibition applies on Shabbat (BT A.Z. 26a; Yoreh Deah 154.2; Rambam excludes this, and look in multiple places),
- 53) for there is no way enmity can be applicable in this situation, for she may say: “For us who keep the Sabbath, we desecrate Shabbat [if we engage in work], but for you who do not keep Shabbat, we are forbidden to desecrate the Shabbat” (BT *Avodah Zarah* 26b).
- 54) And even if there is no biblical prohibition of ripping [a fetus] from its growth [period in the womb] (BT *Shabbat* 107b; see the article “Gozez” (volume 5) subsection “tear” (*tolash*)).
- 55) As in the case where [the Gentile woman] is sitting on the birthing stone and already the body of the fetus has emerged, or that you know that the fetus went full term in the womb and completed its growth as a fetus (Tosofot A.Z. 26a “R. Yosef explained”).

- 56) But if there is a biblical prohibition, it is forbidden even if there will be enmity (Ritba A.Z. 8a).
- 57) Similarly, it is permitted to save an idolater ('*akum*) from a well because of enmity (Yorch Deah 158.1).
- 57a) The men who represented their cities at the sacrifices in the Temple during the week should not fast on Sunday, because Sundays are holidays for Christians [*notzrim*] (BT *Ta'anit* 27b, but the censor erased this, see *Dikdukei Sofrim*) there are more reasons, R. Hananel, R. Gershon Me'or HaGolah, and Rashi),
- 57b) for if Israel fasted [on Sunday], they [the *Notzrim*] would be angry (Rigmah. See *Dikdukei Sofrim* 17: but the sages said that during the era of sacrificial guards, there was no suspicion of causing enmity, etc.).
- 58) We are obliged to attend to an idolater's beast (*be'hemat 'akum*), regardless if [the idolater needs help] releasing the burden from the animal or securing [the burden to it] (see the article "releasing and securing" (*prika u't'inah*)),
- 59) and even when the securing the burden does not involve unnecessary causation of suffering to the animal, in every instance [an Israelite] is obliged [to help] because of enmity (BT *Baba Metzia* 32b; see there Rashi; *Cesef Mishnah* Rotzeach 13:9).
- 59a) Some of the Ahronim were doubtful if there is permission based on "because of enmity" for eating at a wedding feast of idolaters ('*akum*) where there is kosher food on their table (see article "idolater's festivals" (*edeihen shel 'akum*)).
- 60) Even though this is a prohibition, this is what is learned from scripture, as it says:  
"he invites you to partake from his slaughtered sacrifice" (Exodus 34:15);
- 61) which would be like eating idolatrous sacrifices (BT *Avodah Zarah* 8a)

- 62) this prohibition is merely rabbinic and functions to distance [Israelites] from engaging in idolatry (Rambam Idolatry 9:15: "every instance of distancing is because of idolatry ('akum)").
- 63) And perhaps if there is [already] enmity, it is permitted (Drishah, Yorch Deah, 152).
- 64) There are some who decided on this issue, since it is intended that the very prohibition itself is done solely to distance [Israelites] from Gentiles (*nokhri*), there is no permission "because of enmity", for permission based on "because of enmity" is provided only if another reason prohibits it, but ["because of enmity" cannot be a viable reason when] the reason of distancing from them [applies] (Taz, Yorch De'ah, 100:a).
- 65) There are some who permit selling a *mezzuzah* to idolaters ('akum) who seek to affix it to their doors, (Maharil in the Likutim).
- 66) and there are those who prohibit this because there is no enmity (HaRima, according to the ruling by Yorch Deah, at the end of 291, and in Shulchan Arukh 291, see also responsa Sh'ilta Ye'abetz, part II, 121 & 122; see also Yerushalmi Peah 1.1 (15d) the case of Tribunus and Rav).
- 67) They do not permit even a rabbinic prohibition in a place of enmity between Israelites and Gentiles (*nokhri*) (Ritba A.Z. 26a, 6b),
- 68) unless from the beginning the sages did not decree their prohibition under that condition (i.e., that their enactment would be violated where there was enmity) (Ritba, A.Z. 6b).
- 69) Some of the Ahronim doubt the possibility of permitting a rabbinic prohibition in an instance of enmity (Pri Mesadim, Orach Chaim, "of a tent":100.5),

70) and some of them argue according to the Rishonim, that only a biblical prohibition cannot be permitted, but a rabbinic prohibition can be permitted (Yad Shaul, Yoreh Deah 152; see Tosafot A.Z. 26a; Ritba A.Z. 8a).

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